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The Life of a Workers' Compensation Claim

Employer's Responsibilities

Labor Code 5401

The Employer will provide an *Employee's Claim Form for Workers' Compensation Benefits* (DWC-1/SCIF 3301) within one working shift of their knowledge of injury

State of California
Department of Industrial Relations
DIVISION OF WORKERS' COMPENSATION
WORKERS' COMPENSATION CLAIM FORM (DWC-1)

Employee: Complete the "Employee" section and give the form to your employer. Keep a copy and mark it "Employee's Temporary Receipt" until you receive the signed and dated copy from your employer. You may call the Division of Workers' Compensation and hear recorded information at (800) 736-7481. An explanation of workers' compensation benefits is included in the cover sheet of this form.

You should also have received a pamphlet from your employer describing workers' compensation benefits and the procedures to obtain them.

Any person who makes or causes to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying workers' compensation benefits or payments is guilty of a felony.

Employee—complete this section and see note above

1. Name: _____ Today's Date: Fecha de Hoy: _____

2. Home Address: Dirección Residencial: _____

3. City: Ciudad: _____ State: Estado: _____ Zip: Código Postal: _____

4. Date of Injury: Fecha de la lesión (accidente): _____ Time of Injury: Hora en que ocurrió: _____ a.m. _____ p.m.

5. Address and description of where injury happened: Dirección/lugar donde ocurrió el accidente: _____

6. Describe injury and part of body affected: Describe la lesión y parte del cuerpo afectada: _____

7. Social Security Number: Número de Seguro Social del Empleado: _____

8. Signature of employee: Firma del empleado: _____

Employee—complete this section and see note below. Employer—complete this section and note the notation above.

9. Name of employer: Nombre del empleador: _____

10. Address: Dirección: _____

11. Date employer first knew of injury: Fecha en que el empleador supo por primera vez de la lesión o accidente: _____

12. Date claim form was provided to employee: Fecha en que se le entregó al empleado la petición: _____

13. Date employer received claim form: Fecha en que el empleador recibió la petición al empleado: _____

14. Name and address of insurance carrier or adjusting agency: Nombre y dirección de la compañía de seguros o agencia administradora de seguros: _____

State Compensation Insurance Fund

15. Insurance Policy Number: El número de la póliza de Seguro: _____

16. Signature of employer representative: Firma del representante del empleador: _____

17. Title: Título: _____ 18. Telephone: Teléfono: _____

Employer: You are required to date this form and provide copies to your insurer or claims administrator and to the employee, dependent or representative who filed the claim within **one working day** of receipt of the form from the employee.

Employer: Se requiere que Ud. feche esta forma y que proporcione copias a su compañía de seguros, administrador de reclamos, o dependiente/representante de reclamos y al empleado que haya presentado esta petición dentro del plazo de **un día** desde el momento de haber sido recibida la forma del empleado.

SIGNING THIS FORM IS NOT AN ADMISSION OF LIABILITY

☐ Employer accepts Cause del Empleador ☐ Employer accepts Cause del Empleador

EL FIRMAR ESTA FORMA NO SIGNIFICA ADMISION DE RESPONSABILIDAD

☒ Claims Administrator/Administrador de Reclamos ☐ Temporary Receipt/Recibo del Empleado

SCIP 3301 (REV. 7-04) - DWC Form 1 (REV. 7-04)

STATE
COMPENSATION
FUND

Knowledge is when any supervisor or lead person has been told or witnesses the injury

The employer has **one working day** after an Employee Claim Form is filed to authorize medical treatment.

Labor Code 6409.1

The Employer will complete and submit an *Employer's Report of Occupational Injury or Illness* (SCIF 3067) within 5 working days of knowledge of an injury.

Determining Liability

Three primary issues related to determining liability

- AOE/COE
- Labor Code 3202: Liberal Construction
- Medical Substantiation

AOE/COE – in order for a claim to be considered compensable under California Law

- Injury must **A**rise **O**ut of **E**mployment
- Injury must **O**ccur in the **C**ourse of **E**mployment

Labor Code 3202 -

Liberal Construction – Workers' compensation laws shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment

Medical Substantiation - Every injury must be medically substantiated

- 30 day Employer Control –
 - Must be posted in a visible area that is frequented by employees
 - Should be a doctor from the MPN
- Pre-designated treating physician
 - Employer must provide every employee the opportunity to pre-designate a physician
 - The employee must pre-designate the physician prior to the injury
 - The doctor must agree to be pre-designated
 - Must be a doctor that has treated the employee prior to the designation and maintains the employee's medical records

- Medical Provider Network (MPN)
 - List of Doctors maintained by SCIF
 - All claims after effective date must treat with a doctor within the network
 - Employers can refer employees to the MPN

http://www.scif.com/MedFinder/medfinder_fset.htm

Three Types of Claims

Non-Disability

- Claims that result in 3 days or less of medically authorized temporary disability
- Less complex types of injury requiring limited medical oversight
- No Permanent Disability reasonably expected
- Do not involve legal representation
- Closed within 6 months
- Not used in calculating the State Contract Fees

Mini-Disability

- Claims resulting in more that 3 days of medically authorized temporary disability
- Less complex types of injuries requiring limited medical oversight
- No Permanent Disability reasonably expected
- Close within 9 months

Full-Disability

- Usually more complex types of injuries requiring moderate to extensive medical treatment
- Usually significant lost time from work
- Most likely will involve permanent disability
- May involve Vocational Rehabilitation or Supplemental Job Displacement Benefit
- May involve legal Representation
- Expected to be around over 1 year

Benefits

Industrial Disability Benefits (IDL)

- Authorized by SCIF according to medical substantiation
- Number of days used tracked by the employer
- Can use up to 365 days
- Must be used within 2 years from the first date used
- Can be used for medical appointments and partial days
- Any partial day counts as 1 full day against 365 day limit

Temporary Disability (TD)

- Paid by SCIF according to medical substantiation
- The rate is 2/3 of the injured employee's average weekly wage up to a maximum of \$840.00 per week (max may increase each year based on the State Average Weekly Wage)
- Must be paid within **14 days** of the **Employer Date of Knowledge** that disability exists or IDL is ending, and every 14th day thereafter
- Paid in 8 hours increments unless there is a wage loss situation
 - Medical appointments not covered by TD

For date of injury 4/19/04 and later

- 2 year limit from the Date First paid
- Limit of 104 weeks total
- The one year of IDL counts toward the 2 year limit
- Except catastrophic injuries as described in LC 4656

Seasonal TD rates

- Case Law – Jiminez
- Allows for two tier TD rates
 - In Season rate is 2/3 of average weekly wages
 - Off Season rate is 2/3 of average weekly off season wages with a minimum of \$126.00 per week
- Agency must notify SCIF of season starting
- SCIF has 14 days from start of season to increase TD rate

Vocational Rehabilitation (VRMA)

- Paid on Dates of injury up to 12/31/03
- VRMA paid to the injured employee once they become permanent and stationary when they are unable to return to work
- Maximum benefit is \$246.00 per week
- The injured employee can chose to supplement with permanent disability up to their TD rate
- Cap of \$16,000.00 once Notice of Potential Eligibility (NOPE) letter is sent (includes cost of counselor, schools and needed equipment)
- Can be settled up to \$10,000

Supplemental Job Displacement Benefit (SJDB)

- For Dates of injury 1/1/04 and later
- Replaces Vocational Rehabilitation
- Claim must be finalized to be paid
- Determined by the settlement amount up to \$10,000
- Covers cost of schooling only
- Paid directly to a school or Vocational program

Permanent Disability

- Starts 14 days after IDL/TD ends or after P&S
- Based on Medical Findings
- Weekly rates vary depending on the percentage of PD, date of injury and the injured workers' earning at the time of the injury. The current maximum is \$270.00 per week
- Each PD percentage has an assigned number of weeks of compensation
- The number of weeks and the rate is based on legislation in affect on the date of injury
- The number of weeks can vary from year to year

Life Pension

- Paid on claims with PD ratings of 70% or more
- Starts 14 days after PD ends
- Usually about half of the PD weekly rate
- Paid for the rest of the injured employee's life

- 100% disability – the injured employee will receive their TD rate for the rest of their life

Medical Treatment

Labor Code 4600

Whatever is medically **reasonable and necessary** to **cure or relieve** the effects of the industrial injury must be provided

As of 1/1/04

- All Workers' Compensation providers must have a Utilization Review program
- New Medical fee schedules – based on Medi-care fee schedules

As of 4/19/04

- Workers Comp providers can choose to have a Medical Provider Network(MPN)
 - Injured workers must treat with a doctor in the MPN unless they have pre-designated a physician
- Chiropractic and Physical Therapy limited to 24 visits each

Medical Control

Utilization Review (UR)

- Treatment must be based on ACOEM or other “Evidence based guidelines”
- Adjusters can authorize treatment
- Only a doctor can delay, modify or deny a treatment plan
- SCIF has 5 days from receipt to accept, modify or deny treatment unless additional information is needed
- Additional information must be requested within 5 days of receipt, SCIF then has 14 days to make a determination.

If time frames missed

- Case Law (Sandhagen) found if the provider does not make a determination within the required time frames, the treatment will be presumed correct
- Object to the treating physicians findings within 20 days

- Injured employee must go through the QME process
- ### SCIF UR Program

- District Office Health Consultants in each SCIF office
 - Doctors
 - Chiropractors
 - Nurses
- Blue Cross
- Comp Partners

If the injured worker disagrees with the Utilization Review decision, they must go through the QME process to resolve the dispute.

Objecting to Medical Findings

- Must object within 20 days of receipt of the medical report
 - Can be extended on represented cases if both parties agree
- Either party can object
 - Extent and Scope of treatment
 - Existence of New and Further disability
 - Permanent and Stationary status
 - Inability to engage in usual occupation

Qualified Medical Evaluator (QME)/Agreed Medical Evaluator (AME) Process

Once a Primary Treating Physician (PTP) finds the injured employee to be permanent and stationary (P&S), State Fund (SCIF) and the injured employee/Applicant's Attorney (AA) have **20 days to agree or object to the findings**.

- If all parties **agree**, the case will be worked up for a settlement authority request.
- If either party **disagrees**, the parties must proceed through the AME/QME process.

Unrepresented –

- If **SCIF agrees** with the PTP, but the **injured disagrees** –
 - ♦ the injured employee completes a Request for a Panel QME
 - ♦ sends it to the DWC (Division of Workers' Compensation)
 - ♦ The DWC issues a panel of 3 doctors
 - ♦ The injured employee has 10 days from receipt to pick a doctor and schedule an evaluation.
- If **SCIF disagrees** with the PTP, whether the injured agrees or not –
 - ♦ the injured employee has 10 days to complete the Request for a Panel QME and send it to the DWC
 - ♦ If the injured employee does not comply, SCIF completes the form
 - ♦ DWC issues a panel of 3 doctors
 - ♦ The injured employee has 10 days to pick a doctor and schedule an evaluation
 - ♦ If they do not choose a doctor, SCIF can pick the doctor and schedule the evaluation.

Represented –

- If **either party disagrees**
 - ♦ either party can object within 20 days (or if agreed upon by both parties, a longer period of time)
 - ♦ If objecting, an AME offer must be made
 - ♦ If a doctor can be agreed upon, that doctor makes all the final determinations on the file.
 - ♦ If a doctor **can not be agreed upon**
 - **Prior to 1/1/05 –**
 - both parties obtained their own QME to make the final determinations
 - we tried to negotiate a settlement somewhere in between the two doctors
 - **After 1/1/05 –**
 - Either party can request a panel of QME doctors
 - Once panel received from the DWC, each party has three days to strike one doctor from the list
 - The last doctor left on the list is considered the AME. This process has been coined “the last doc standing”
 - If either party fails to strike a doctor timely, the other party may just pick a doctor and schedule an evaluation

- This doctor becomes our AME and makes all the future and final determinations on the file.

Permanent Disability

Permanent Disability –

The residual effects of industrial injury as ascertained and described by physicians when the employee’s condition becomes “**permanent and stationary**” or has reached “**maximum medical improvement**”.

“P&S” or “MMI”

A condition is considered “P&S” or “MMI” when it has **stabilized and is unlikely to change in the next year.**

Physicians provide information about the injured employee’s permanent impairment and limitations. The medical findings and conclusions are then translated into a permanent disability rating based on procedures and benchmarks set forth by the Labor Code and the Permanent Disability Rating Schedule.

Prior to 1/1/05 –

- PD ratings based on the injured employees “**inability to compete in the open labor market**”.
- PD ratings determined by the adjuster interpreting the information reported by the physician.
- Physician would report on
 - objectively measurable limitations (e.g. amputation, loss of motion)
 - subjective complaints (e.g. pain)
 - work restrictions the employee could not perform or should not perform to prevent any further injury (e.g. no heavy work, limited to substantial work).
- Adjuster uses a formula to convert the findings of the physician into a PD Rating

After 1/1/05 –

- PD ratings based solely on the objective findings of the physician.
- The physician now required to measure the medical history and objective findings against the **Activities of Daily Living**
- The physician is required to report an impairment using the **American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th edition)**.
- The impairment standard provided by the physician
- The adjuster adjusts the rating to account for the diminished future earning capacity. (Replaced the “inability to compete in the open labor market”)

The Activities of Daily Living:

- ☐ Self Care
- ☐ Communication
- ☐ Physical Activity
- ☐ Sensory Function
- ☐ Non-specialized hand activities
- ☐ Travel
- ☐ Sexual Function
- ☐ Sleep

Impairment vs. Disability

Impairment – loss, loss of use or derangement of any body part, organ system or organ function

Disability – effect of impairment on the ability to meet personal, social or occupational demands

Ratings can range from 0% to 100%.

- Zero percent signifies no reduction in their ability to meet personal, social or occupational demands
- 100% represents *legal* total disability. Total disability does not mean that the employee cannot work, but rather represents a level of

disability at which they would not normally be expected to be able to successfully meet personal, social or occupational demands.

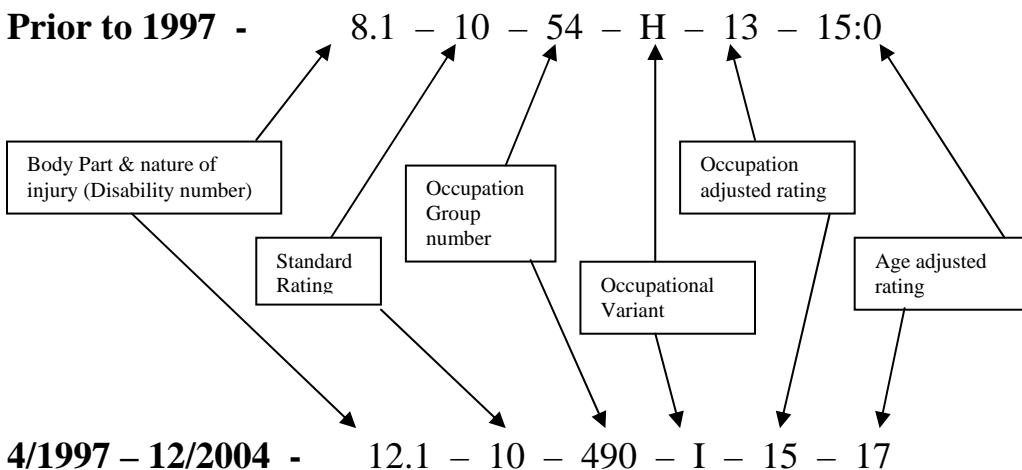
RATINGS

- Currently 3 (three) Schedules for Permanent Disability Rating (PDR).
 - The first was developed in 1914 and revised in 1978.
 - The second schedule was adopted April 1, 1997. The only basic differences in the first and second schedules were the disability numbers changed and the occupation codes went from two digits to three.
 - The third PDR was adopted by emergency regulations on 1/1/05. This rating schedule changed the ratings quite a bit. It could still be changed pending passage of the final regulations.

(The following ratings are examples for a 50 year old, safety officer, with a low back injury)

Old Formulas

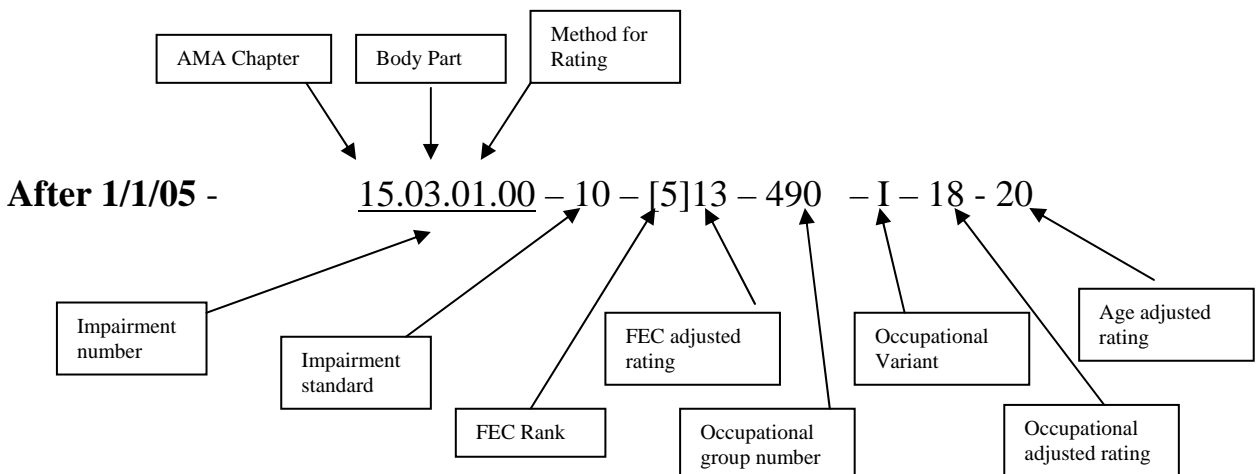
Prior to 1997 -



4/1997 - 12/2004 -

12.1 - 10 - 490 - I - 15 - 17

New Formula



1. Nature of injury

- **Prior to 1/1/05 – Disability number**
 - The Permanent Disability Rating Manuals (PDR) divide disabilities into 21(pre 97) and 14 (pre 05) main categories
 - Each category corresponding to a major body part or function.
 - The categories are then subdivided to incorporate more specific injuries to that body part. The subdivisions are numbered to the left of the decimal.

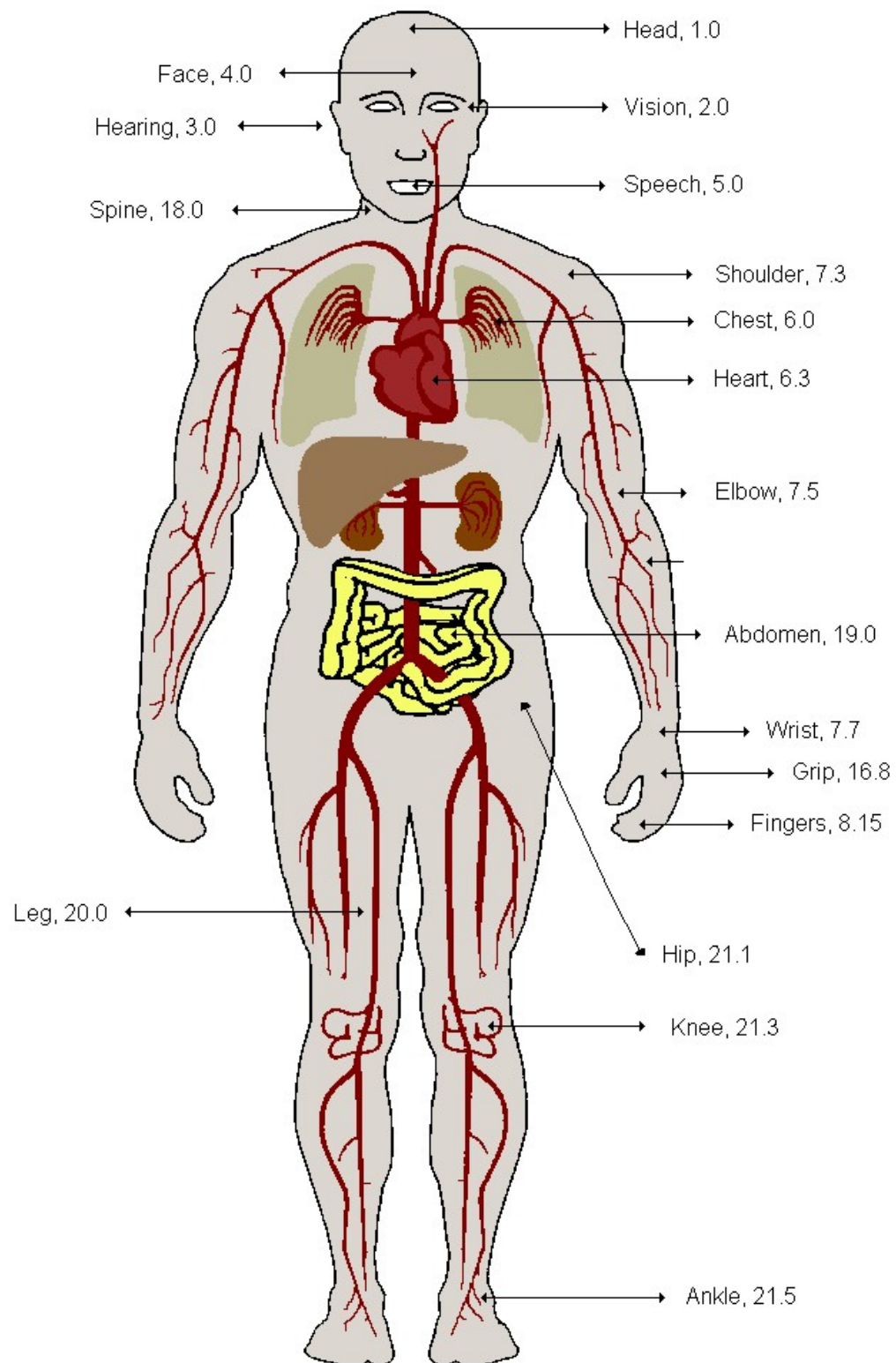
Example - A lower extremity injury would have a disability number of 14 (under the 4/97 PDR) and the knee would have a disability number of 14.5 and the hip 14.3.

- **After 1/1/05 – Impairment number**
 - The Impairment number corresponds to the chapter in the AMA Guides.
 - Each Chapter covers a body part or body function.

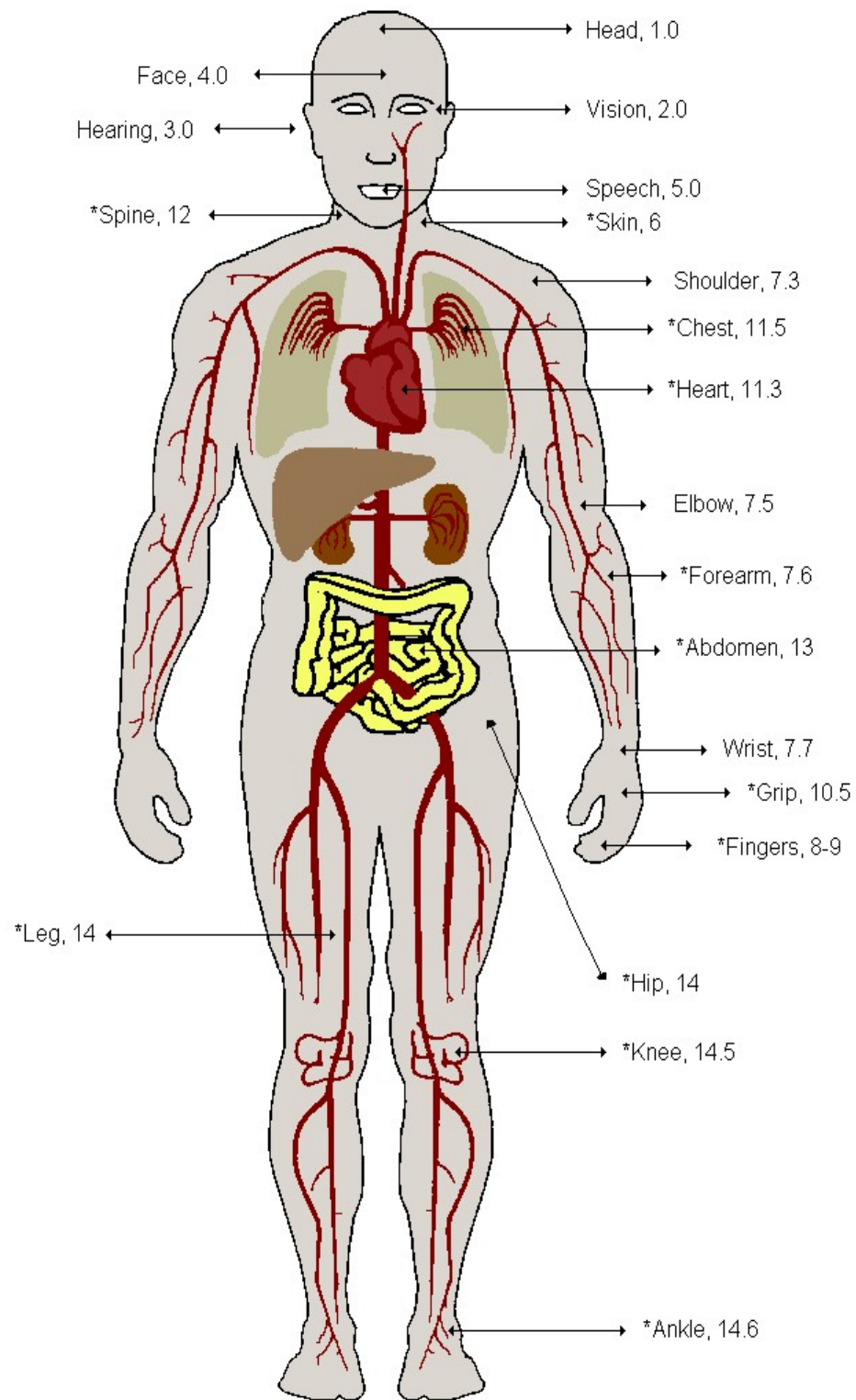
Example - The lower extremities are covered under chapter 17. So an impairment that starts with a 17 is a lower extremity.

- The second number in the impairment number indicates the actual body part (e.g. hip is a 03, knee is a 05, etc.).
- The third number is the method the doctor used to rate the impairment (e.g. Range of motion, Atrophy, Diagnosis based estimate, etc.).
- The fourth number further defines the injury (e.g. soft tissue, fracture, etc.).

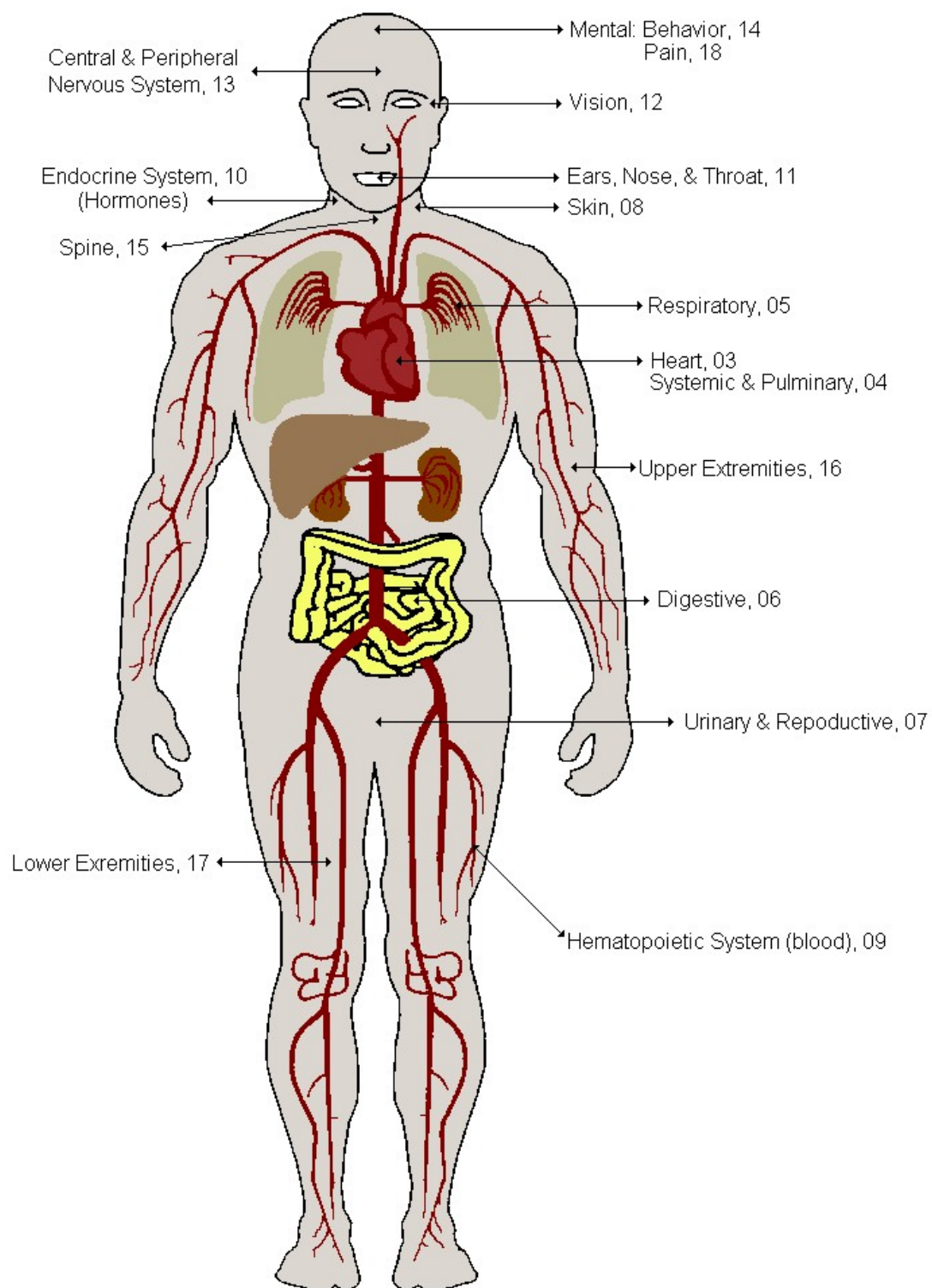
PERMANENT DISABILITY: Anatomical Drawing for DOI up to 3/31/97



PERMANENT DISABILITY: Anatomical Drawing fro DOI April 1, 1997+



PERMANENT DISABILITY: Anatomical Drawing for DOI after 1/1/05



2. Standard Rating or Impairment Rating

Both -

- Based on the medical findings and conclusions of the physician
- Represents the degree of disability for a theoretical average worker, (i.e. a worker with average occupational demands on all parts of the body and at the average age of 39).

Standard Rating –

- Determined by the adjuster based on findings reported by physician
 - The objective findings (e.g. amputation, loss of motion)
 - Subjective factors (e.g. pain complaints)
 - Work preclusions

Impairment Rating –

- Represents the degree of impairment based on
 - the medical history
 - current medical findings
 - the impact on the Activities of Daily living
- The physician reports the percentage of impairment and the basis for the rating
 - Must list all the pages, charts and tables he used to make his determination.

3. Future Earning Capacity (FEC)

- Dates of injury 1/1/05 or later
- Claims which employee has not returned to work prior to 1/1/05
- No time Lost, but not P&S prior to 1/1/05
- Each impairment number is assigned a FEC number in the PDR Manual

Since the Activities of Daily Living (ADL) did not include occupation, the FEC was used to help account for an employees “diminished future earning capacity”.

- FEC will cause the impairment rating to increase 10% to 40%, based on the type of injury, which gives us the FEC adjusted rating.

4. Occupational Group Number

- The **standard rating** (prior to 1/1/05) or the **FEC adjusted rating** (after 1/1/05) modified to take into account the requirements of the specific occupation that the worker was engaged in at the time of his/her injury.
 - If the occupation requires more than average use of the injured body part, the rating is modified upward
 - If the body part is relatively less important to the occupation, the rating is decreased.

5. Occupational Variant

- The occupational group number is determined
- We reference a chart in the PDR - determines the impact of the disability/impairment on the occupation
- Assigns a letter code - Each letter represents the demands on a body part in each occupation. (“F” is considered average demands, “E”, “D” and “C” represent progressively lesser demands, while “G”, “H”, “I” and “J” reflect progressively higher demands).

6. Occupational Adjusted Rating

- The Occupation variant applied to the standard rating/FEC adjusted rating, by using charts in the PDR to determine a new rating level.

7. Age Adjusted Rating

- The rating is adjusted to account for the injured employee’s age at the time of his/her injury.
- The average age is considered to be 37 – 41. (Any age lower than 37 will cause a decrease in rating as it is presumed that younger people heal more quickly and easily. Any age over 41 will cause the rating to increase as it is presumed that older people will heal less easily).

8. Apportionment

- The physician determines what percentage of the injury is related to the industrial injury and which percentage is pre-existing.
- The current laws provide that any pre-existing injury or cause of impairment should be apportioned
- The employer should pay for only the percentage of the impairment that was caused by the industrial injury
- Any pre-existing workers' compensation settlements will be **conclusively presumed** still in tact and will be apportioned.
 - In cases of pre-existing disabilities or conditions, the physician determines the percentage of disability which is related to the industrial injury. The percentage is written in front of the rating as follows:
70 (12.1 – 10 – 490 – I – 15 – 17) 12%

70 (15.03.01.00 – 10 – [5]13 – 490 – I – 18 – 20) 14%
 - In cases of prior industrial settlements, the awarded dollar amount is subtracted from the new amount of disability

Disability Evaluations Unit

Rating specialists at each WCAB office that provide disability ratings for claims. They can do three types of ratings.

- Summary Rating
 - Must have for all unrepresented claims from 1/1/91 to 1/1/94
 - No longer mandatory, but Judges require you prove you requested one
 - Can be issued on a PTP report or a panel QME report
 - Not binding on either party, but they are difficult to fight
- Formal Rating
 - Issued on litigated cases at the request of the Workers' Compensation Judge
- Consultative Rating
 - Not an official rating
 - Merely advisory and is usually obtained to assist in settling a claim
 - May be obtained regardless of legal representation
 - Not admissible in a judicial proceeding

+/- 15% for Regular, Modified or Alternative Work

For injuries occurring on or after 1/1/05, Labor Code §4658(d) states claims costs may be reduced for an employer that employs 50 or more employees if they offer the injured employee regular, modified or alternative work with in **60 days of a disability becoming permanent and stationary**.

All State agencies are considered to be one employer (The State is the State), therefore all qualify for decreases.

All offers of regular, modified or alternative work are governed by the definitions of Labor Code §4658.1

- **Regular Work** – The employee’s usual occupation or the position in which the employee was engaged at the time of injury and that offers wages and compensation equivalent to those paid to the employee at the time of the injury and located within a reasonable commuting distance of the employee’s residence.
 - The Wage and compensation for any increase in working hours over the average hours worked at the time of injury shall not be considered.
 - The employee may waive the condition that regular, modified or alternative work be located within a reasonable distance of the employee’s residence at the time of injury
 - The condition is waived if the employee accepts regular, modified or alternative work and does not object to the location within 20 days of being informed of the right to object.
 - The condition is conclusively deemed satisfied if the offered work is at the same location and same shift as the employment at the time of injury.
- **Modified Work** – Regular work modified so that the employee has the ability to perform all the functions of the job and that offers wages and compensation that are at the least 85% of those paid to the employee at the time of injury and located within a reasonable commuting distance of the employee’s residence at the time of injury
- **Alternative Work** – Work that the employee has the ability to perform, that offers wages and compensation that are a least 85% of those paid to the employee a the time of injury, and that is located with a reasonable commuting distance of the employee’s residence at the time of injury.

Increase vs. Decrease

- ❖ If within **60 days** of a disability becoming permanent and stationary, an **employer does not offer an injured employee regular, modified or alternative work for a period of at least 12 months**, each disability payment remaining to be paid from the date of the 60 day period shall be ***increased by 15%***.

Example: If the base rate is \$200/week, the payment will be increased to \$230/week (15% more).

- ❖ If within **60 days** of a disability becoming permanent and stationary, an **employer offers an injured employee regular, modified or alternative work for a period of at least 12 months**, and regardless of whether the offer is accepted or rejected, each disability payment remaining to be paid from the date the offer was made will be **decreased 15%**.

Example: If the base rate is \$200/week, the payment will be decreased to \$170/week (15% less).

- ❖ If the **employer terminates the regular, modified or alternative work** before the end of the period for which disability payment are due, the amount of each of the remaining payment shall **increase 15%**.

Example: If the base rate was \$200/week but this is initially reduced to \$170/week (15% less) due to an offer of regular, modified or alternative work, the remaining benefits would be paid at \$230/week.

- ❖ If an **employee voluntarily** quits then he/she will not be eligible for 15% increase of the remaining weeks of PD benefits from the time of leaving employment.

Example: If the base rate if \$200/week, payment will continue to be paid at \$170/week (15% less). Payments will **not** revert back to the base rate of \$200/week.

Settlement Process

Authority Requests

Once the medical file is complete, including reports addressing permanent and stationary, permanent disability and apportionment, SCIF will request authority from the employer to settle the claim(s).

The adjuster will

- Estimate the value of the claim
 - Permanent disability
 - Future Medical treatment
 - Any outstanding TD issues
 - Any outstanding medical liens
- Prepare a finalization worksheet
- Prepare an authority request
- Send it to the RTWC

Employer has 10 days from receipt to authorize the authority request or state any objections

- If there is not a timely response, SCIF can assume authority

The Authority requests will include:

Proposed Finalization for State Cases (Authority Request)

PROPOSED FINALIZATION FOR STATE CASES			
DATE: 6/13/2005		DUE DATE: _____	
TO: _____		AGENCY: _____	
FROM: _____		SCIF OFFICE: State Contracts - Sacramento	
NAME: _____		SS#: _____	
WORK LOCATION: _____		OCCUPATION: _____	
CLAIM NUMBER:	1. _____	2. _____	3. _____
DATE OF INJURY:	1. _____	2. _____	3. _____
NATURE OF INJURY(IES)		PARTS OF BODY	STATUS
1. _____		_____	_____
2. _____		_____	_____
3. _____		_____	_____
WORK STATUS: _____			
REHABILITATION STATUS: _____			
LITIGATION STATUS: _____		DATE: _____	ATTY: _____
APPLICATION FILED: _____		DATE: _____	SUBRO: _____
WCAB HEARING SET: _____		DATE: _____	RECOVERY: \$ _____
ISSUE(S) OF PERMANENT DISABILITY (RATING AS EXPRESSED IN PERCENT AND DOLLARS)			
	P&S DATE	PERCENT	AMOUNT
1. RATING OF TREATING PHYSICIAN:	_____	%	\$ _____
2. RATING OF PANEL PHYSICIAN:	_____	%	\$ _____
3. RATING OF AGREED MEDICAL EXAMINER:	_____	%	\$ _____
4. RATING OF (A) DEFENSE QME:	_____	%	\$ _____
(B) APPLICANT QME:	_____	%	\$ _____
(PLEASE ATTACH RATING FORMULA ALONG WITH PERTINENT MEDICAL REPORTS(S))			
OTHER ISSUE: (I.E. AOE/COE, T.D., IDL, APPORTIONMENT, FUTURE MED., ETC.) PLEASE NOTE: IDL 3 YEARS POST C.O.I. WILL BE INCLUDED IN SETTLEMENT AS T.D. IF POSSIBLE: INCLUDE MERITS OF THE CASE TO JUSTIFY SETTLEMENT REQUEST.			
ENTER NARRATIVE HERE:			
AUTHORITY REQUESTED: C&R _____ STIPULATION _____			
<div style="border: 1px solid black; width: 100px; height: 100px; margin: 0 auto; display: flex; flex-direction: column; align-items: center; justify-content: center;"><div>June 13, 2005</div><div>TL/State Contracts</div></div> <div style="text-align: center; margin-top: 5px;">ADJUSTER</div>		<div style="border: 1px solid black; width: 100px; height: 100px; margin: 0 auto;"></div> <div style="text-align: center; margin-top: 5px;">SUPERVISOR</div>	
AGENCY AUTHORITY GRANTED: _____		DATE: _____	

Finalization Worksheet

See CRM Guideline 10-20-406

FINALIZATION WORKSHEET

Claim No _____ Employee _____ DOI _____

Occupation _____ DOB _____ PD Rate \$ _____ LP Rate \$ _____

☐ C&R ☐ STIP App's Attorney _____ Phone _____

ISSUES: ☐ AOE/COE ☐ SUBRO ☐ Open ☐ Closed ☐ N/A
If open, has settlement been discussed w/subro attorney? ☐ Yes ☐ No

Other _____

MEDICARE: Is employee currently receiving Medicare benefits? ☐ Yes ☐ No
Has employee applied for or is there a reasonable expectation the employee will be on Medicare within 30 months of C&R? ☐ Yes ☐ No
Medicare's interests will be addressed in the C&R ☐ Yes ☐ No

Voc Rehab Status: ☐ Not QIW ☐ SJDB eligible ☐ Not eligible for SJDB
☐ QIW If QIW: ☐ participating in services ☐ interrupted or deferred ☐ terminated ☐ Settled

CURRENT ESTIMATES: COMP \$ _____ MED \$ _____ TOTAL \$ _____

PAID TO DATE: TD \$ _____ VRMA \$ _____ VR SETTLEMENT \$ _____

PD ADV \$ _____ PD \$ _____ MED \$ _____

DEFENSE MEDICAL

MDT: _____

(ATTACH PDR PRINTOUT)

SPLIT %: _____

APPLICANT MEDICAL

MDT: _____

ESTIMATED FUTURE VALUES
(Use reverse side if more space is needed)

FULL	% DISCOUNT		FULL	% DISCOUNT
\$ _____	\$ _____	PDR	\$ _____	\$ _____
_____	_____	VR SETTLEMENT OR SJDB	_____	_____
_____	_____	FURTHER MED	_____	_____
_____	_____	OTHER: (TD, LIENS)	_____	_____
_____	_____	LIFE PENSION	_____	_____
\$ _____	\$ _____	TOTAL	\$ _____	\$ _____

SUGGESTED RANGE: \$ _____ TO \$ _____

☐ LESS PD ADVANCES OF \$ _____

☐ LESS O/S LIENS TOTALING \$ _____

STIP AT _____ %, \$ _____ FURTHER MED ☐ YES ☐ NO

REASON FOR C & R/STIP: _____

ADJUSTER/DATE

SUPERVISOR/DATE

COMPANION CASES INCLUDED IN THIS SETTLEMENT: ☐ YES ☐ NO IF YES, LIST ON REVERSE SIDE.

SUPERVISOR'S REMARKS: _____

SCIF 3283 (REV. 4-04)

ESTIMATE EVALUATION WORKSHEET								

INJURED :				SCIF LIAB %:		CLAIM NO:		
ADJUSTER:				SUPERVISOR: Diane E Wells,		claims DATE:		3/14/05
ESTIMATE TYPE: Routine Revision						LP:		DOI: 1/24/00
<hr/>								
FUTURE TEMPORARY DISABILITY:							PAYED:	\$ 37,722.65
FROM: 0/00/00 THRU:		0/00/00 WEEKS 0 DAYS 0 RATE:		0.00 \$		\$ 0		
FROM: 0/00/00 THRU:		0/00/00 WEEKS 0 DAYS 0 RATE:		0.00 \$		\$ 0		
								\$ 0
								\$ 0
----- TEMPORARY DISABILITY TOTAL:							\$	37,723
VR1 WEEKS		(PAID: \$	0.00)				\$	0
VR2 EVAL/TEST/COUNSELING		(PAID: \$	0.00) \$		0		\$	0
VR3 TRAINING/EXPENSES		(PAID: \$	0.00) \$		0		\$	0
								\$ 0
(VR CODE: 0)		VOCATIONAL REHABILITATION TOTAL: \$ 0						
<hr/>								
SJDB PAID:\$.00	ESTIMATE:\$.00					SJDB TOTAL: \$.00	
<hr/>								
OCCUP: OA(T)	DOB: 1/31/59		RATE: \$160	PAID: \$		2,800.00		
TRNS # SELECTED: 1	MDT%: 16:	NO. PDR TRNS: 2						
%-	(12.1200- 20%-112D- 16- 16)		-	- 16				
Not P&S								
CL,Other:								
PD EST: \$	8,680 LP PAID: \$	0 LP EST:	0	BURIAL EXPENSE/DEATH BENEFIT:	\$ 0			
					PERMANENT DISABILITY TOTAL:	\$ 8,680		
<hr/>								
TOTAL ESTIMATED COMPENSATION:							\$	46,403
<hr/>								
MEDICAL DOCTOR FEES	1STYR	14x COST	115+FUTYR	1x L.E.	35.97	PAYED: \$	42,662.80	
						\$	5,747	
						\$	0	
						\$	0	
PHYSIO-THERAPY HOSPITAL PRESCRIPTIONS medss	1STYR	24x COST	85+FUTYR	1x L.E.	35.97	\$	5,097	
						\$	0	
						\$	1,000	
						\$	500	
						\$	0	
NURSING CARE MEDICAL/LLEGAL DEFEEV 2+APPEV 2x COST 750 MISCELLANEOUS						\$	3,000	
						\$	0	
						\$	0	
LIFE EXPECTANCY: 34.13						MEDICAL TOTAL: \$	50,558	
<hr/>								
LOSS EXPENSE AND REFORM ACT PENALTIES records						PAYED: \$	1,060.56	
						\$	1,000	
						\$	0	
						\$	0	
LOSS EXPENSE TOTAL:							\$	1,194
<hr/>								
TOTAL ESTIMATED MEDICAL AND LOSS EXPENSE:							\$	51,752

Balance Sheet

*****SCIF CLAIMS BALANCE WORKSHEET*****

03/15/05

BENEFITS PAYABLE

TD.....DOI: 05/08/96

061803 063003 602.00 1/6 1118.00

PAID AMOUNTS & BALANCE DUE

CLAIM NO:

PAID COMP (D.O. MASTER): 18806.00

TOTAL PAID PENALTIES: 242.00

PAID VR LOSS EXPENSE: 0.00

INJURED

PAYMENTS HEREWITH

pay inj 1: 880.00

pay inj interest 2: 6.30

pay AA 3: 120.00

4:

5:

6:

TD TOTAL: 1118.00

SJDB.....

SJDB TOTAL:

VR.....

SUBTOTAL: 1006.30

BALANCE DUE

WKS @ =

OTHER PAID/DUE

OTHER PAID/DUE SUBTOTAL:

NOTATIONS

ADJUSTER:

ATTY FEE W/HELD 12% AMT W/HELD

VR1 TOTAL: 0.00

VR2 TOTAL: 3827.00

VR3 TOTAL: 4582.70

VOC REHAB TOTAL : 8409.70

PD.....

ADVANCES LUMP SUMS: 1006.30

PD SUPPLEMENTAL AMOUNT: 0.00

050897 051898 154.00 53/5 8272.00

ADVANCE TOTAL: 9278.30

AWARD/DEATH BENEFITS

ADVANCES OR PD/DB TOTAL: 9278.30

OTHER.....

C & R: 1000.00

P&S DATE:

L.P. 0/0 WKS/D @ 0.00 : 0.00

LIFE PENSION

LP TOTAL: 0.00

PD PENALTIES 1: 242.00

OTHER ITEMS SUBTOTAL: 242.00

INT....INTEREST/DELAYED PAYMENT.....

PAY DATE:06/14/01 AWD DATE: 05/22/01

DAYS: 23 N/C INT: 6.30

TOTAL INT DELAYED PAY: 6.30

INTEREST ON COMMUTATION

INTEREST SAVED: (0) 0.00-

GRAND TOTAL PAYABLE: 20054.30

LP START: @ PER WK

GRAND TOTAL PAID/DUE: 20054.30

SCIF Rating (DOI prior to 1/1/05)

PERMANENT DISABILITY RATING SYSTEM

Claim #:
Date: 03/02/04

Injured's name:
Employer's name: TEALE DATA CENTER
WCAB #: 98SAC002
Occupation: ABTRACTOR 111

Transaction #: 1
Date of injury: 07/29/97
Age at DOI: 47
Avg. weekly wage: 1329.23

Adjuster:

Factors Of Disability

IMPAIRED FUNCTION OF THE NECK, SPINE, OR PELVIS:

STANDARD BASED ON MEDICAL REPORT/ESTIMATE

Final Formula

Appr. %		Subj.	Final %
	(12.1200 - 30 - 111 - C - 23 - 26)		26

The rating is 26.00% amounting to 101.75 weeks of disability payments at the rate of \$ 170.00 a week in the total sum of \$ 17297.50.

Adjuster's Notes

Report based on Dr 0109 report: work restriction precludes hvy wrk
p&s date 010901

tma

SCIF Rating (DOI Post 1/1/05)

Permanent Disability Rating Report

Event Date: 6/12/2005
Event Name: John Doctor 6/15/05 PTP

Examinee Name: Joe Claimant
Date of Birth: 6/15/1965
Social Security #: ____ - ____ - ____

PHYSICAL FINDINGS

LUMBAR SPINE (Chapter-15, Table 15-3/P.384):

DRE method was selected.

Lumbar Spine DRE is classified as Category III that calculates 10 % Impairment.

CERVICAL SPINE (Chapter-15, Tables 15-12/P.418, 15-13/P.420, 15-14/P.421) :

ROM method was selected for the following reasons: No injury reported and the cause is uncertain and the DRE method does not apply.

CERVICAL DISORDERS (CHAPTER-15, TABLE 15-7/P.404)	
III. Spondylolysis and Spondylolisthesis, not operated on	A. Spondylolysis or grade I (1%-25% slippage) or grade II (26%-50% slippage) spondylolisthesis, accompanied by medically documented injury that is stable, and medically documented pain and rigidity with or without muscle spasm.

Spine Nerves (Right): (Chapter 15, Table 15-15/P.421, 15-16/17/18/P.424)

PERIPHERAL NERVE	SENSORY GRADE	DEFICIT (%)	MOTOR GRADE	DEFICIT (%)
Spinal Nerve Root - C5	4	8	4	6

SPINE IMPAIRMENT SUMMARY

	Lumbar	Thoracic	Cervical
DRE Imp%	10	0	0
ROM Imp%	0	0	3
Disorders Imp%	0	0	6
Nerve Imp%	0	0	1
Regional Total Imp%	10	0	10
Spine Total Imp%	19		
Pelvis Imp%	0		
Corticospinal Imp%	0		

IMPAIRMENT SYSTEM AND RATIONALE Organ System and whole person impairment

(All calculations are based on Guides to the Evaluation of Permanent Impairment, 5th Edition. Combined values chart (Page 604) has been used throughout the application to combine impairments wherever necessary)

BODY PART OR SYSTEM	CHAPTER NO	IMPAIRMENT %
Spine	15	19

CALCULATED TOTAL WHOLE PERSON IMPAIRMENT: 19 %.

California Apportionment

DISABILITY DESCRIPTION	IMPAIRMENT	APPORTIONMENT	SUBJECTIVE
Cervical – Range of Motion – Spondylolysis, no operation	6% (WPI)	20	0

California PD Report

Date of Injury: 01/14/2005

Date of Birth: 06/15/1965

Age at DOI: 39

Occupation: Correction Offi

Group No.: 490

Average Weekly Earnings: \$1,200.00

Lumbar – Diagnosis-related Estimate

15.03.01.00 - 10 - [5] 13 - 490I - 18 - 18

Cervical – Range of Motion – Spondylolysis, no operation

80%(15.01.02.03 - 6 - [5] 8 - 490I - 12 - 12) 10

Lumbar – Diagnosis-related Estimate(18)

Cervical – Range of Motion – Spondylolysis, no operation(10)

18 combined with 10 = 26

26 % = \$220.00 per week * 106.75 weeks = \$23,485.00

If L.C. 4658(d)(2-3) applies:

* the weekly rate increased by 15% = \$253.00

* the weekly rate decreased by 15% = \$187.00

Signature

DEU Summary Rating

Department of Industrial Relations
DIVISION OF WORKERS' COMPENSATION
OFFICE OF BENEFIT DETERMINATION
DISABILITY EVALUATION UNIT
31 East Channel Street, Room 417
Stockton, Ca 95202-2314
209/948-3651

STATE OF CALIFORNIA
GRAY DAVIS, Governor

SUMMARY RATING DETERMINATION

DEU FILE NO:

DATE: April 9, 2001

Employee:
Oscar

Carrier:

STATE COMPENSATION INS FUND
P.O. BOX 659011
SACRAMENTO, CA 95865-9011

Employee Representative:

Formal Medical Evaluation of:
WIL D. D.C. dated 03-08-99

THIS PERMANENT DISABILITY RATING DETERMINATION IS BASED ON THE FOLLOWING FACTORS:

Date of Injury (DOI): 01-22-97
Occupation: PAROLE AGENT I

Age on DOI: 46

LIMITATION OF ABDUCTION OF RIGHT SHOULDER JOINT TO 160/180; INTERMITTENT MILD TO MODERATE SHOULDER PAIN WITH OVERHEAD REACHING AND LIFTING IN EXCESS OF 35-40 POUNDS; PRECLUDED FROM OVERHEAD REACHING OR LIFTING IN EXCESS OF 30 POUNDS; INTERMITTENT SLIGHT TO MODERATE NECK PAIN; PRECLUDED FROM VERY HEAVY WORK.

REC'D/COPY TO CLAIMS
APR 10 2001
SACRAMENTO

DEU Summary Rating (page 2)

Department of Industrial Relations
DIVISION OF WORKERS' COMPENSATION
OFFICE OF BENEFIT DETERMINATION
DISABILITY EVALUATION UNIT
31 East Channel Street, Room 417
Stockton, Ca 95202-2314
209/948-3651

STATE OF CALIFORNIA
GRAY DAVIS, Governor

SUMMARY RATING DETERMINATION

Page 2
DEU #:

7.3	-	2%	54I-	4-	4:2
12.1	-	15%	54I-	21-	23:0
					27:0

FUTURE MEDICAL TREATMENT REQUIRED

The Permanent Disability Rating is 27% of total disability which is equivalent to 107.75 weeks of disability payment. Based on average weekly earnings of \$1,119.92 the weekly rate is \$170.00 in the total sum of \$18,317.50. Payments commence within 14 days after the date of last payment of temporary disability indemnity.

By:  _____
Joe Carranza, Disability Evaluator

DEU FORM 102 (NEW 1-91)

A97681

Mandatory Settlement Conference (MSC)

Once Authority is provided, SCIF will attempt to negotiate a settlement. If we are unable to settle the claim we proceed into the litigation process.

Declaration of Readiness(DOR)

- Offer of settlement must be made prior to filing a DOR
- Parties must object to a DOR within 10 days
- MSC will be scheduled by the WCAB regardless of objection or not

Preparation for an MSC

- SCIF will request authority
- List of Witnesses
- All exhibits to be presented at trial
 - Medical
 - Investigation
 - Subrosa tapes
 - Personnel records
 - Misc. Documentation

Goal of the MSC is to resolve all issues.

If we are unable to settle, the case will be set for trial

- Discovery will most likely be closed by the Judge

Other things to Consider Prior to Settlement

5814 Penalties

- Labor Code 5814
- Prior to 6/1/04
 - 10% of full species of benefits (TD, PD, Medical, etc.)
 - Could be filed on any late payment regardless if it was found and paid as a self-imposed penalty by the adjuster
- After 6/1/04
 - Up to 25% of late payment
 - If late payment found and paid as self imposed 10% by SCIF prior to being filed by the app attorney, no additional payment should be due

132A

- Labor Code 132A
- The employer can not discriminate against the employee as a result of filing a workers' compensation claim
- The penalty is one-half the value of the claim (all species of benefits - TD, PD, VR & Medical - past, present and future), in addition to all entitled benefits, up to \$10,000

Serious and Willful (S&W)

- Labor Code 4553
- An employers knowledge of a hazard prior to an injury may expose the Department
- The penalty is one-half the value of the claim (all species of benefits - TD, PD, VR & Medical - past, present and future), in addition to all entitled benefits
- No limit

Medicare Set Aside

- Compromise and Release settlements only
- A Medicare Allocation Review is required...
 - If currently receiving Medicare benefits or will be in the next 30 months
 - If settlement is over \$250,000.00

Subrogation

- Third party liability claims
 - Motor Vehicle Accidents
 - Defective Products
 - ◆ Chairs, elevators, equipment, etc...
- Can only be filed if the claimant personally files suit against the third party
- Subrogation Legal Unit
- Recovery
 - Cash – deposited back to the case
 - Statutory Credit
 - ◆ SCIF takes credit for any further benefits due
 - ◆ Injured must provide receipts for medical treatment

Liens

- Filed by medical providers when medical treatment payments are in dispute
- Provider must pay \$100 to the WCAB to file a lien
- If the findings are against the employer, we reimburse the provider the \$100 fee, in addition to payment of the bill
- Provider can file a lien within
 - 6 months from the date of settlement
 - 5 years from the date of injury
 - 1 year from the date services were providedWhichever is later

Claims Resolution

There are four basic types of formal settlements or resolutions to a claim

1. Stipulations with Request for Award (stips)

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

«Applicant»	<i>Applicant</i>
vs.	
«Defendant»; State of California Lawfully uninsured with State Compensation Insurance Fund as adjusting agent	<i>Defendants</i>

Case No: «WCABcaseNo»

**Stipulations
with Request
for Award**

The parties hereto stipulate to the issuance of an Award and/or Order, based upon the following facts, and waive the requirements of Labor Code Section 5313:

1. **«Applicant»**, born **«DOB»**, while employed within the State of California as **«Occupation»** on **«DOI»**, by **«Defendant»** whose compensation insurance adjusting agent was **State Compensation Insurance Fund** sustained injury arising out of and in the course of employment to the **«InjuredBodyPart»**.
2. The injury caused temporary disability for the period **«TDperiod»** for which indemnity is payable at \$ **«TDrate»** per week, less credit for such payments previously made.
3. The injury caused permanent disability of **«PDpercentage»**%, for which indemnity is payable at **\$«PDweeklyRate»** per week beginning **«PDbeginningDate»**, in the sum of **\$«PDtotalSum»**, less credit for such payments previously made. An informal rating **«InformalRating»** been previously issued.
4. There **«FutureMed»** need for medical treatment to cure or relieve from the effects of said injury.

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

5. Medical-legal expenses are payable by defendant as follows:
- a) **Defendant has paid all medical-legal expenses, unless otherwise noted below.**
6. Applicant's attorney request a fee of \$_____
7. Liens against compensation are payable as follows:
- a) **Lien of XXXX has been negotiated and settled for \$XXXX. Lien of XXXX has not been settled; negotiations have been unsuccessful. Jurisdiction of the WCAB is reserved.**
8. Other stipulations:
- a) **This settlement is within the range of medical evidence as reflected in the report(s) of Dr. XXXX, which rates (XX-XX-XX-XX) based on work preclusion of CAT X and of Dr. XXXX, which rates (XX-XX-XX-XX) based on work preclusion of CAT X. Parties stipulate to XX%.**
- b) **Interest on accrued benefits included if the award is paid within 25 days of receipt of Workers' Compensation Appeals Board approval.**
- c)

«Applicant» Date

«EEssNumber»
Applicant's Social Security Number

«ERaddress»
Employer's Address

«EEaddress»«EE City State Zip»
Applicant's Address

PO Box 659011 Sacramento, CA 95865-9011
Insurance Adjusting Agency's Address

Applicant's Attorney «EEattorney»

Defendant's Representative «SCIFclaimsRep»

«EEattorneyAddress»
Applicant Attorney's Address

PO Box 659011 Sacramento, CA 95865-9011
Authorized Representative's Address

Case No: «WCABcaseNo»
SCIF Claim No: «SCIFclaimNO»
DOI: «DOI»

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

AWARD

AWARD IS MADE in favor of «Applicant» against «Defendant» for:

- A) Temporary disability indemnity in accordance with paragraph 2 above,
- B) Permanent disability indemnity in accordance with paragraph 3 above,
Less the sum of \$_____ payable to applicant's attorney as the reasonable value of services rendered.
Less liens in accordance with paragraph 7 above,
- C) Further medical treatment in accordance with paragraph 4 above,
- D) Reimbursement for medical-legal expenses in accordance with Paragraph 5 above,
- E) Stipulations in accordance with paragraph 8 above.

Dated:

Judge

WORKERS' COMPENSATION APPEALS BOARD

Copy served on all persons listed on
Official Address Record.

Date: _____

By: _____
(Signature)

2. Compromise and Release (C&R)

COMPROMISE AND RELEASE PLEASE SEE INSTRUCTIONS ON REVERSE OF PAGE 2 BEFORE COMPLETING FORM	STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS DIVISION OF WORKERS' COMPENSATION WORKERS' COMPENSATION APPEALS BOARD	SCIF CLAIM NO. <u>«SCIFclaimNO»</u> CASE NO. <u>«CaseNo»</u> SOCIAL SECURITY NO. <u>«SSnumber»</u>
--	---	--

<u>«Applicant»</u> <small>APPLICANT (EMPLOYEE)</small>	<u>«ApplicantAddress»</u> <small>ADDRESS</small>
<u>«Employer»</u> <small>CORRECT NAME OF EMPLOYER</small>	<u>«EmployerAddress»</u> <small>ADDRESS</small>

<u>STATE COMPENSATION INSURANCE FUND</u> <small>CORRECT NAME OF INSURANCE CARRIER OR ADJUSTING AGENT</small>	<u>PO BOX 659011 * SACRAMENTO, CA 95865-9011</u> <small>ADDRESS</small>
---	--

1. The injured employee claims that while employed as a «Occupation»
(OCCUPATION AT TIME OF INJURY)
 on «DOI» at «InjuryCityState», by the employer
(DATE OF INJURY) (CITY, STATE)
 (s)he sustained injury arising out of and in the course of employment to «BodyPart»
(STATE WHAT PARTS OF BODY WERE INJURED)
2. The parties hereby agree to settle any and all claims on account of said injury by the payment of the sum of \$«SettlementSum» in addition to any sums heretofore paid by the employer or the insurer to the employee, less amounts set forth in Paragraph No. 6.
3. Upon approval of this compromise agreement by the Workers' Compensation appeals Board or a workers' compensation judge and payment in accordance with the provisions hereof, said employee releases and forever discharges said employer and insurance carrier from all claims and causes of action, whether now known or ascertained, or which may hereafter arise or develop as a result of said injury, including any and all liability of said employer and said insurance carrier and each of them to the dependents, heirs, executors, representatives, administrators or assigns of said employee.
4. Unless otherwise expressly provided herein, approval of this agreement RELEASES ANY AND ALL CLAIMS OF APPLICANT'S DEPENDENTS TO DEATH BENEFITS RELATING TO INJURY OR INJURIES COVERED BY THIS COMPROMISE AGREEMENT. The parties have considered the release of these benefits in arriving at the sum in Paragraph No. 2.
5. Unless otherwise expressly ordered by a workers' compensation judge, approval of this agreement DOES NOT RELEASE ANY CLAIM APPLICANT MAY NOW OR HEREAFTER HAVE FOR REHABILITATION OR BENEFITS IN CONNECTION WITH REHABILITATION.
6. The parties represent that the following facts are true: (If facts are disputed, state what each party contends under Paragraph No. 10.)

DATE OF BIRTH <u>«DOB»</u>	ACTUAL EARNINGS AT TIME OF INJURY <u>\$«Earnings»</u>	LAST DAY OFF WORK DUE TO THIS INJURY <u>«LastDayOffWork»</u>
-------------------------------	--	---

PAYMENTS MADE BY EMPLOYER OR INSURANCE CARRIER		
TEMPORARY DISABILITY INDEMNITY <u>\$«TDtotal»</u>	WEEKLY RATE <u>\$«TDweeklyRate»</u>	PERIODS COVERED <u>«TDperiods»</u>
PERMANENT DISABILITY INDEMNITY <u>\$«PDtotal»</u>	TOTAL MEDICAL AND HOSPITAL BILLS <u>\$«MedTotal»</u>	

BENEFITS CLAIMED BY INJURED EMPLOYEE	
BEGINNING AND ENDING DATES OF ALL PERIODS OFF DUE TO THIS INJURY <u>«TDperiods»</u>	MEDICAL AND HOSPITAL BILLS PAID BY EMPLOYEE <u>«MedBillsPaidByEE»</u>
TOTAL UNPAID MEDICAL AND HOSPITAL EXPENSE: <u>Unknown</u>	ESTIMATED FUTURE MEDICAL EXPENSE
To Be Paid By: <u>«UnpaidMedPaidBy»</u>	To Be Paid By: <u>None by Defendant</u>

THE FOLLOWING AMOUNTS ARE TO BE DEDUCTED FROM THE SETTLEMENT AMOUNT:

<u>\$«PDtotal»</u>	PAYABLE TO SCIF	\$0000	PAYABLE TO
\$0000	PAYABLE TO	\$0000	PAYABLE TO
\$0000	PAYABLE TO	\$0000	PAYABLE TO

LEAVING A BALANCE OF \$«BalanceOf», less approved attorney fee (See Paragraph No. 9), payable to applicant. (If payment is to be other than in a lump sum, or there is additional information, specify on separate page(s).) Less all additional advances made to payment of award.

Less all additional advances made to payment of award. (Delete if not applicable)

SCIF 3415 (REV. 1992)
(PAGE 1)
DIA WCAB 15

7. Liens not mentioned in Paragraph No. 6 are to be disposed of as follows: (Choose One) Lien of XXXX has been negotiated and settled for \$XXXX. No liens. Lien of XXXX has not been settled; settlement negotiations have been unsuccessful. Lien to be litigated with WCAB jurisdiction reserved. All paid
8. For the purpose of determining the lien claim(s) filed for benefits paid pursuant to the Unemployment Insurance Code or for benefits furnished by lien claimants defined in Labor Code Sec. 4903.1, the parties propose reduction of the lien claim(s) in accordance with formulas attached.
9. Applicant's (employee's) attorney requests a fee of \$_____. Amount of attorney fee previously paid, if any, \$_____.
10. Reason for Compromise, special provisions regarding rehabilitation and death benefits claims, and additional information:
- This settlement is within the range of medical evidence as reflected in the report(s) of Dr. XXXX, which rates (XX-XX-XX-XX) based on work preclusion of CAT X and of Dr. XXXX, which rates (XX-XX-XX-XX) based on work preclusion of CAT X.**
 - See attached addendum, which is an integral and binding part of this agreement.**
11. It is agreed by all parties hereto that the filing of this document is the filing of an application on behalf of the employee, and that the WCAB may in its discretion set the matter for hearing as a regular application, reserving to the parties the right to put in issue any of the facts admitted herein, and that if hearing is held with this document used as an application the defendants shall have available to them all defenses that were available as of the date of filing of this document, and that the WCAB may thereafter either approve said Compromise Agreement and Release or disapprove the same and issue findings and Award after hearing has been held and the matter regularly submitted for decision.

WITNESS the signature hereof this _____ day of _____, 20____, at _____

WITNESS

APPLICANT (EMPLOYEE) (DATE)

WITNESS

(DATE)

THE APPLICANT'S (EMPLOYEE'S) SIGNATURE MUST BE ATTESTED BY TWO DISINTERESTED PERSONS

OR ACKNOWLEDGED BEFORE A NOTARY PUBLIC.

(DATE)

(DATE)

STATE OF CALIFORNIA

County of _____ }

On this _____ day of _____ A.D., 20____, before me, _____

a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared _____

known to me to be the person _____ whose name _____

subscribed to the within Instrument, and acknowledged to me that _____ he _____ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

Notary Public in and for said County and State of California

WCAB CASE NUMBER(S):
APPLICANT:
SCIF CLAIM NUMBER(S):

GENERAL PROVISIONS ADDENDUM

1. CONDITIONS FOR COMPROMISE AND RELEASE

There is a good faith dispute as to the nature, extent, and duration of disability, the need for future medical care, whether the claimed disability is the result of the alleged injury or injuries of record. The parties desire to avoid the hazards of litigation and wish to settle for a lump sum certain and defendants wish to buy their peace.

The parties have reviewed the circumstances surrounding this claim, including the medical reports, and agreed that the settlement contemplated is fair and reasonable. This Compromise and Release is intended to include all aspects of the injury or injuries, whether now known or unknown, or which may hereafter arise or develop as a result of the injury or injuries and specifically includes, but is not limited to, all injuries and disability or disabilities as documented in the medical file. The entire medical record in existence at the time of settlement is incorporated by reference herein.

2. SETTLEMENT OF ACCRUED BENEFITS

The settlement includes any claims for retroactive benefits and reimbursement, including, but not limited to, temporary disability indemnity, vocational rehabilitation temporary disability, vocational rehabilitation maintenance allowance, mileage reimbursement, out-of-pocket medical expense, and any interest or penalties, including, but not limited to, sanctions and self-imposed penalties, claimed up to the date of the Order Approving Compromise and Release.

3. VOCATIONAL REHABILITATION

This agreement specifically includes a release of all rehabilitation benefits including vocational rehabilitation temporary disability benefits or maintenance allowance payments until such time as the applicant serves upon the defendant notice of intent to pursue rehabilitation and is determined to be a qualified injured worker.

4. PAYMENT CONDITIONS

Credit is taken for all permanent disability advances made. In the event that there is a dispute concerning any credit taken by defendant, no penalties and interest shall accrue. This settlement includes all interest up to and including thirty (30) days after receipt of the Order Approving Compromise and Release by defendants. Any claims for penalties and interest are waived if this agreement is paid on or before the thirtieth (30th) day following the date of receipt of the Order Approving Compromise and Release by defendants.

5. LEVEL OF PERMANENT DISABILITY

As the result of date of injury _____ applicant has _____ permanent disability to the _____.

Applicant understands, acknowledges, and agrees that this settlement resolves and settles all issues, claims, benefits, and causes of action arising out of this injury.

APPLICANT _____

DATE _____

APPLICANT'S
ATTORNEY _____

DATE _____

DEFENDANT'S
ATTORNEY _____

DATE _____

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

SCIF No: «SCIFclaimNO»

«Applicant»

Applicant

Case No: «CaseNo»

vs.

**«Employer»;
State of California
Lawfully uninsured with State Compensation
Insurance Fund as adjusting agent**

Defendants

**Order Approving
Compromise and Release**

The parties to the above-entitled action having filed a Compromise and Release herein, on June 29, 2005 settling this case for \$«SettlementSum» in addition to all sums which may have been paid previously, and requesting that it be approved; and this Board having considered the entire record, including said Compromise and Release, now finds that it should be approved.

Release of Applicant's dependent's potential rights to death benefits has been considered in the adequacy of the Compromise and Release.

The agreed upon settlement amount is considered adequate, based upon a review of the medical evidence.

If checked: This judge has noted and considered the Rodgers/Carter release with respect to any basic benefits resulting from any further injury in rehabilitation in determining adequacy of this settlement and specifically notes that this Compromise and Release does NOT settle Labor Code §139.5 benefits.

If checked: Based upon _____, I find that there are genuine issues, which, if resolved against the applicant, would result in his/her taking nothing. Therefore the Compromise and Release of vocational rehabilitation benefits is appropriate per Thomas v Sports Chalet.

IT IS ORDERED that said Compromise and Release be approved. AWARD is made in favor of: **«Applicant»**, and Against **«Employer»** as follows:

\$«SettlementSum», payable in one lump sum to applicant, LESS advances of Permanent Disability according to proof, and less attorney fees of _____ payable to applicant's attorney.

Interest included in Award if paid within 20 days of receipt of Workers' Compensation Appeals board approval.

Filed and served by mail/personally on: _____
On all parties on the _____
Official Address Record. Workers' Compensation Judge

By: _____

3. Findings and Award

- Determined by the Judge
- Findings based on evidence and testimony presented at trial
- Parties have 20 days to object to the findings
 - File a Petition for Reconsideration (Recon)
- If the Petition is not granted, parties file an Appeal
 - Reviewed at the Appellate Court Level
- If we disagree with those finding we file a Writ of Certiorari
 - Reviewed at the Supreme Court Level

4. Dismissal

- Filed on litigated files when the applicant attorney fails to complete their discovery
- SCIF must notify all parties of intent to dismiss
- Parties have 20 days to file an objection with the DWC
- Judge reviews and issues a determination
 - The judge will allow an additional 10 days for an objection before the decision is final

Resources For More Information

The California Labor Code
www.leginfo.ca.gov/calaw

The Department of Industrial Relations
www.dir.ca.gov

The Division of Workers' Compensation
www.dir.ca.gov/dwc

California Workers' Compensation Institute
www.cwci.com

State Compensation Insurance Fund
www.scif.com

Department of Personnel Administration
www.dpa.ca.gov

VOCATIONAL REHABILITATION and the Supplemental Job Displacement Benefit:

Returning an Injured State Employee to Work



State Compensation Insurance Fund

Vocational rehabilitation services are provided to an injured employee who is unable to return to work in his or her date of injury occupation. The State of California, the employer, and the State Compensation Insurance Fund (SCIF) need to work together in order to return an injured employee to a productive and useful place in the community, with a priority on returning him or her to employment with the State.

Vocational Rehabilitation Services are provided to injured employees, with dates of injury on or before December 31, 2003, who cannot return to their usual and customary position, even with modifications, vocational rehabilitation benefits are available. These services are outlined in the 2003 edition of the California Labor Code (LC) in Section 4635 (d), which states:

- Services required to determine if an employee can reasonably be expected to return to suitable gainful employment;
- Services reasonably necessary to provide an employee with the opportunity to return to suitable gainful employment; and
- These services may include, but are not limited to, vocational and medical evaluation, counseling, job analysis, job modification assistance, retraining, including on-the-job training or training for alternative employment, formal training, academic instruction, and job placement assistance

When vocational rehabilitation services are needed one of the primary goals is to provide the injured employee with an opportunity to return to suitable gainful employment. LC Section 4635 (f) defines suitable gainful employment as follows:

- Employment or self-employment which is reasonably attainable and which offers an opportunity to restore the employee as soon as practicable and as near as possible to maximum self-support, due consideration being given to the employee's qualifications, likely permanent disability, vocational interests and aptitudes, pre-injury earnings and future earning capacity, and the present and projected labor market. No one factor shall be considered solely in determining suitable gainful employment.

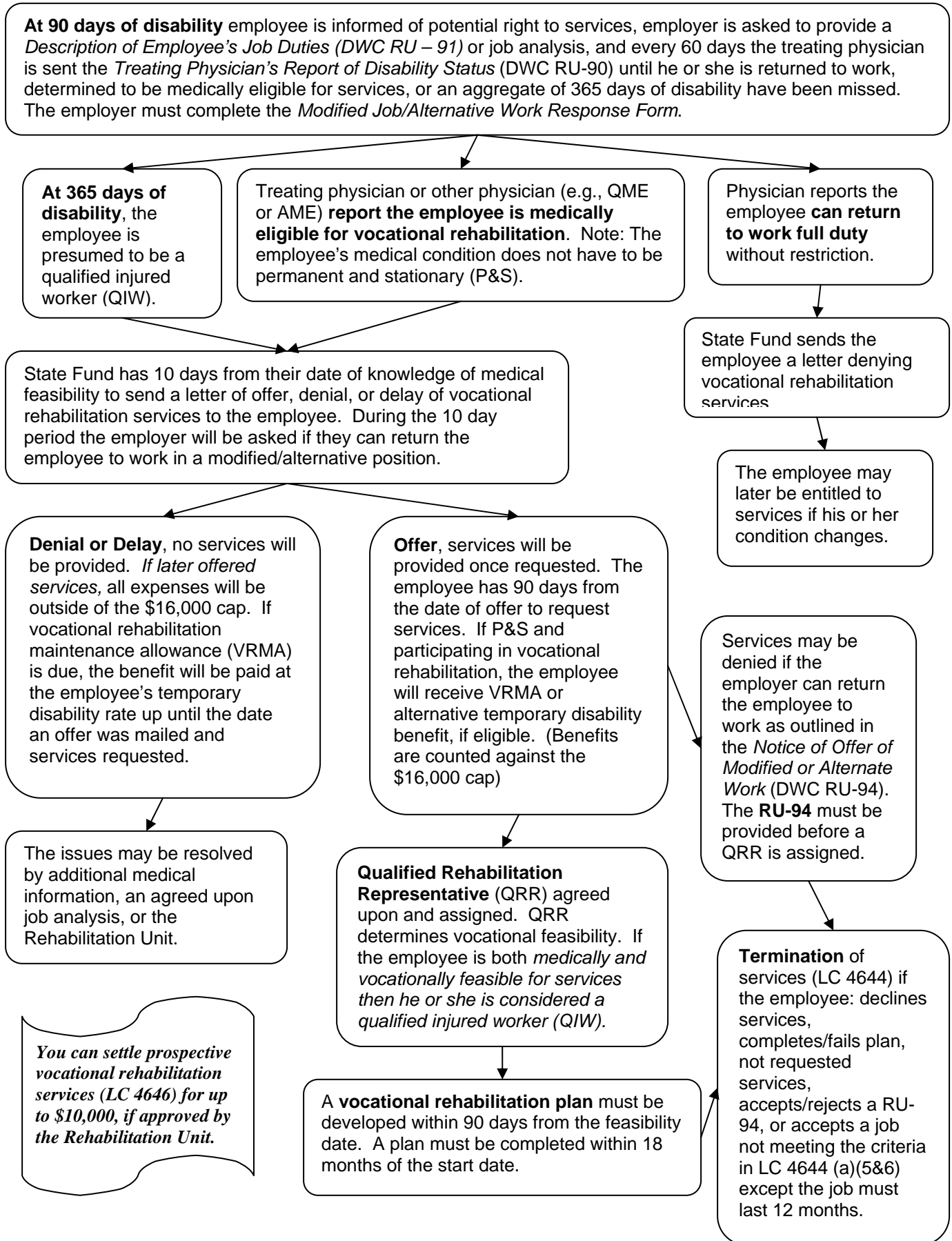
In general, vocational rehabilitation is handled in the same manner for both public and private sector employees. The State may provide a vocational rehabilitation plan to any employee who becomes disabled on an industrial basis and needs a permanent work change. The aggregate cost of vocational skill training offered through the plan is limited to a maximum of \$16,000. Generally, an injured worker is paid Vocational Rehabilitation Maintenance Allowance (VRMA), which is less than Temporary Disability (TD) payments but greater than the employee would receive from Permanent Disability (PD) payments. It is critical to understand the overall structure of State civil service and how the benefits of State service impact the management of the vocational rehabilitation services available to an injured State employee.

Vocation rehabilitation services were repealed (LC Sections 135.5, 4635-4347, & 5405.5) effective January 1, 2004 and replaced with the Supplemental Job Displacement Benefit (SJDB). The SJDB is provided to an eligible injured employee with a date of injury occurring on or after January 1, 2004. The SJDB is a voucher for a retraining or skill enhancement program at a state approved or accredited school. The voucher can range in value up to \$10,000 based on the level of an injured employee's permanent disability and can be used towards tuition, fees, books, vocational rehabilitation counselor services, and other related expenses. There is no longer a provision for VRMA.

To be eligible an injured employee must not have been returned to work with his or her employer within 60 days after his or her temporary disability period and has a permanent disability. However the employer is not liable for the SJDB if they offer the injured employee modified or alternative work within 30 days of his or her temporary disability period. The modified or alternative work must pay at least 85% of the date of injury salary, last at least 12 months, be within a reasonable commuting distance, and accommodate the work restrictions.

The following section provides an overview of the vocational rehabilitations services available to an injured employee who is unable to return to his or her usual and customary occupation, the vocational rehabilitation process, your responsibilities, and information on the SJDB.

VOCATIONAL REHABILITATION PROCESS



Qualified Injured Worker

- LC 4635 (a) (1) Medical Eligibility: An employee's expected permanent disability as a result of the injury, whether or not combined with the effects of a prior injury or disability, if any, permanently precludes, or is likely to preclude, the employee from engaging in his or her usual occupation or the position in which he or she was engaged at the time of injury.
- LC 4635 (a) (2) Vocational Feasibility: The employee can reasonably be expected to return to suitable gainful employment through the provision of vocational rehabilitation services.

Qualified Injured Workers (QIW) Identification Process

LC 4636

- When aggregate total disability continues for 90 days, the employer shall provide to the employee information on the Americans with Disabilities Act, Fair Employment and Housing Act, and the nature and scope of vocational rehabilitation services.
- If the employee has not previously been identified as being medically eligible for vocational services, the employer shall provide a jointly developed job description with the physical requirements of the employee's duties to the treating physician.
- Continue to follow-up with the treating physician at least every 60 days until:
 - Employee is released to return to his/her usual occupation
 - Employee is determined to be medically eligible for vocational rehabilitation
 - When aggregate total disability exceeds 365 days, the employee is presumed to be QIW.

NOTE: AN EMPLOYEE'S MEDICAL STATUS DOES NOT NEED TO BE PERMANENT AND STATIONARY BEFORE DETERMINING MEDICAL ELIGIBILITY FOR SERVICES.

Permanent and Stationary (P&S)

- Employee does not have to be P&S to participate in vocational rehabilitation.
- If an employee's work restrictions are not known, a functional capacity evaluation or work evaluation may provide useful information.
- Employee's weekly disability rate will likely drop once they become P&S – and the \$16,000 cap starts.
- The longer an employee is off work, the harder it is to return to work successfully.

Description of Employee's Job Duties

- If possible, have an agreed-upon job description/job analysis on file and submit it to SCIF with the Employer's Report of Occupational Injury or Illness form (SCIF 3067). The job description must describe the physical requirements of the job.
- SCIF will mail you the Description of Employee's Job Duties form (DWC RU-91), if one is not available and the injured worker is temporarily disabled for 45 days or more.
- Complete and return the RU-91 to SCIF as soon as possible.

Job Analysis

- It is crucial that a job description contains all of the information the physician needs to determine if an employee is medically eligible for vocational services.
- A job analysis can detail the specific duties of a job or the psychological stresses that are difficult to describe in a job description.
- If an employer and employee cannot agree on the job description, then a job analysis can be requested.
- The usual fee for a job analysis is \$325, plus mileage, but may be higher.

Description of Employee's Job Duties (DWC Form RU-91) - Front

State of California
Division of Workers' Compensation

DESCRIPTION OF EMPLOYEE'S JOB DUTIES

INSTRUCTIONS: This form shall be developed jointly by the employer and employee and is intended to describe the employee's job duties. The completed form will be reviewed by the treating doctor to determine whether the employee is able to return to his/her job. This is an important document and should accurately show the requirements of the employee's job. If the employee needs help in completing this form, the employee may contact the Information and Assistance Officer at the Division of Workers' Compensation. The phone number can be found in the State Government section of the phone book.

EMPLOYEE NAME:	(LAST)	(FIRST)	(M.I.)	CLAIM #:
EMPLOYER NAME:		JOB ADDRESS:		
JOB TITLE:		HRS. WORKED PER DAY:	HRS. WORKED PER WEEK:	
DESCRIPTION OF JOB RESPONSIBILITIES: (DESCRIBE ALL JOB DUTIES)				

1. Check the frequency of activity required of the employee to perform the job.

ACTIVITY (Hours per day)	NEVER 0 hours	OCCASIONALLY up to 3 hours	FREQUENTLY 3-6 hours	CONSTANTLY 6-8+ hours
Sitting				
Walking				
Standing				
Bending (neck)				
Bending (waist)				
Squatting				
Climbing				
Kneeling				
Crawling				
Twisting (neck)				
Twisting (waist)				
Hand Use: Dominant hand Right ___ Left ___				
Is repetitive use of hand required?				
Simple Grasping (right hand)				
Simple Grasping (left hand)				
Power Grasping (right hand)				
Power Grasping (left hand)				
Fine Manipulation (right hand)				
Fine Manipulation (left hand)				
Pushing & Pulling (right hand)				
Pushing & Pulling (left hand)				
Reaching (above shoulder level)				
Reaching (below shoulder level)				

DWC Form RU-91 (1/95)

Description of Employee's Job Duties (DWC Form RU-91) – Back

2. Please indicate the daily Lifting and Carrying requirements of the job:
Indicate the height the object is lifted from floor, table or overhead location and the distance the object is carried.

	LIFTING					CARRYING				
	Never 0 hours	Occasionally up to 3 hours	Frequently 3–6 hours	Constantly 6–8+ hours	Height	Never 0 hours	Occasionally up to 3 hours	Frequently 3–6 hours	Constantly 6–8+ hours	Distance
0–10 lbs.										
11–25 lbs.										
26–50 lbs.										
51–75 lbs.										
76–100 lbs.										
100+ lbs.										

Describe the heaviest item required to carry and the distance to be carried: _____

3. Please indicate if your job requires:

	YES	NO	(IF YES, PLEASE BRIEFLY DESCRIBE)
a. Driving cars, trucks, forklifts and other equipment?	<input type="checkbox"/>	<input type="checkbox"/>	_____
b. Working around equipment and machinery?	<input type="checkbox"/>	<input type="checkbox"/>	_____
c. Walking on uneven ground?	<input type="checkbox"/>	<input type="checkbox"/>	_____
d. Exposure to excessive noise?	<input type="checkbox"/>	<input type="checkbox"/>	_____
e. Exposure to extremes in temperature, humidity or wetness?	<input type="checkbox"/>	<input type="checkbox"/>	_____
f. Exposure to dust, gas, fumes, or chemicals?	<input type="checkbox"/>	<input type="checkbox"/>	_____
g. Working at heights?	<input type="checkbox"/>	<input type="checkbox"/>	_____
h. Operation of foot controls or repetitive foot movement?	<input type="checkbox"/>	<input type="checkbox"/>	_____
i. Use of special visual or auditory protective equipment?	<input type="checkbox"/>	<input type="checkbox"/>	_____
j. Working with bio-hazards such as: bloodborne pathogens, sewage, hospital waste, etc.	<input type="checkbox"/>	<input type="checkbox"/>	_____

Employee Comments:

Employer Comments:

EMPLOYER CONTACT NAME:	EMPLOYER CONTACT TITLE:
EMPLOYER REPRESENTATIVE SIGNATURE:	DATE:
EMPLOYEE'S SIGNATURE:	DATE:
QUALIFIED REHAB. REPRESENTATIVE SIGNATURE: (IF APPLICABLE)	DATE:

DWC Form RU-91 (1/95)

Treating Physician's Report of Disability Status (DWC Form RU-90)

TREATING PHYSICIAN'S REPORT OF DISABILITY STATUS

INSTRUCTIONS: Pursuant to requirements of the California Labor Code, please complete this form and return it to the claims administrator listed below within 15 days of receipt with a copy to the Qualified Rehabilitation Representative.

EMPLOYEE NAME:	(LAST)	(FIRST)	(M.I.)	SS#	DATE OF INJURY
EMPLOYER NAME:					
<p>Attached is a description of the employee's job duties. Based on your examination, including the history provided by the patient and the enclosed job description, choose one of the following:</p> <p>_____ I expect to release the employee to return to the pre-injury occupation on or about _____.</p> <p>_____ The employee's permanent disability as a result of the injury whether or not combined with the effects of a prior injury or disability, if any is likely to preclude the employee from returning to work at the pre-injury occupation.</p> <p>Is the employee currently physically able to participate in vocational rehabilitation services? _____ Yes _____ No</p> <p>If yes, please describe any physical limitations: _____</p> <p>_____</p> <p>If employee is not physically able to participate in vocational services, please estimate when participation may be possible.</p> <p>_____</p> <p>_____ At this time, I am unable to give an opinion concerning the employee's ability to return to the pre-injury occupation.</p> <p>I expect to be able to provide an opinion on or about: _____</p>					
<p>Please advise also if the employee is currently physically able to perform light duties if modified or alternative work is available:</p> <p>_____ Yes, with the following limitations: _____</p> <p>_____ No</p>					
<p>Physician's Name: _____ Date: _____</p> <p>Physician's Signature: _____</p>					
<p>Please return to: Employer/Insurer/Adjusting Agent</p> <p>_____</p> <p>Address: _____ (Street) _____ (City) _____ (State) _____ (Zip)</p> <p>_____</p> <p>Send a copy to Qualified Rehabilitation Representative:</p> <p>_____</p> <p>Address: _____ (Street) _____ (City) _____ (State) _____ (Zip)</p>					

State of California
DWC Form RU-90 (12/90)

Qualified Injured Worker Notification

- Notice of Potential Eligibility (NOPE) Types: Offer, Denial, Delay must be sent to the employee within 10 days of knowledge that the injured employee is medically eligible for services.
- During the 10 day period the employer is asked if they can return the injured employee to modified or alternative work.
- If so, the employer needs to provide the employee with an Offer of Modified/Alternative Work form (DWC RU-94).
- If not, the \$16,000 vocational rehabilitation cap won't begin until:
- -NOPE Offer Letter is sent to injured worker.
- -Injured worker receives notice that there is no modified or alternative work available.
- -Employee requests services
- If a NOPE Denial or NOPE Delay Letter is sent then no services will be provided until the issues are resolved. If vocational services are later provided then all cost up to the date of offer and employee's request are outside of the cap.

Notice of Offer of Modified or Alternate Work (DWC RU-94)

- Employee must have the ability to perform the essential functions of the job.
- The job is a regular position lasting at least 12 months.
- The job offers wages and compensation within 15% of those paid at time of injury.
- The job is located within reasonable commuting distance of employee's residence at the time of injury.
- Employee has 30 calendar days to accept or reject job offer.
- Liability for vocational rehabilitation services terminates if above conditions are met.

RU-94 Suggestions

- Explore modified/alternate work possibilities as early as possible - provide temporary light-duty work if possible while employee is still Temporary Disabled.
- Provide employee with RU-94 form as soon as a permanent modified or alternate job is offered.
- Attach a list of job duties – the job does not have to be approved by the treating physician first.
- Liability for voc rehab is terminated even if employee rejects the job offer as long as required conditions are met.

Notice of Offer of Modified or Alternative Work (DWC Form RU-94)

NOTICE OF OFFER OF MODIFIED OR ALTERNATIVE WORK

THIS SECTION COMPLETED BY EMPLOYER OR CLAIMS ADMINISTRATOR:

Employer (name of firm) _____ is offering you the position of a
(name of job) _____.

Attach a list of the duties required of the position.

You may contact _____ concerning this offer. Phone No.: _____

Date of offer: _____ Date job starts: _____

Claims Administrator: _____ Claim Number: _____

NOTICE TO EMPLOYEE Name of employee: _____

Date offer received: _____

You have 30 calendar days from receipt to accept or reject this offer of modified or alternative work. If you reject this job offer, you will not be entitled to rehabilitation services unless:

Modified Work

- A. The proposed modification(s) to accommodate required work restrictions are inadequate.
- B. The modified job will not last 12 months.

Alternative Work

- A. You cannot perform the essential functions of the job; or
- B. The job is not a regular position lasting at least 12 months; or
- C. Wages and compensation offered were less than 85% paid at the time of injury; or
- D. The job is beyond a reasonable commuting distance from residence at time of injury.

THIS SECTION TO BE COMPLETED BY EMPLOYEE

___ I accept this offer of Modified or Alternative work.

___ I reject this offer of Modified or Alternative work and understand that I am not entitled to vocational rehabilitation services.

Signature

Date _____

I feel I cannot accept this offer because:

NOTICE TO THE PARTIES

If the offer is not accepted or rejected within 30 days of the offer, the offer is deemed to be rejected by the employee.

The employer or claims administrator must forward a completed copy of this agreement to the Rehabilitation Unit with a Notice of Termination (DWC Form RU-105) within 30 days of acceptance or rejection.

If a dispute occurs regarding the above offer or agreement, either party may request the Rehabilitation Unit to resolve the dispute by filing a Request for Dispute Resolution (DWC Form RU-103) at the applicable Rehabilitation Unit. The Rehabilitation Unit venue is the same as the Workers' Compensation Appeals Board. If no WCAB case exists, file with a Rehabilitation Unit at the appropriate district office.

MANDATORY FORMAT
STATE OF CALIFORNIA
DWC-RU-94 (01/03) §10133.12

Vocational Feasibility

- Is the employee reasonably expected to return to suitable gainful employment?
- The Qualified Rehabilitation Representative (QRR), who is an outside vocational counselor, determines feasibility
- A vocational rehabilitation plan must be developed within 90 days of the feasibility date.
- If employee is not feasible, he or she is not a qualified injured worker, and no further benefits are due.
- If not feasible, it is possible that the employee's is a 100% disabled. A dispute may arise over whether or not the employee has a 100% permanent disability???
- The employee may later become feasible and at that time he or she may be eligible for services.

Vocational Rehabilitation Plans

- The rationale for the manner and means by which it is proposed that a qualified injured worker may be returned to suitable gainful employment
- Post 1/1/94 dates of injury
 - plans for unrepresented injured workers must be approved by the Rehabilitation Unit
 - \$16,000 cap on all voc rehab expenses
 - 52 week limit on VRMA
 - 18 month limit to from plan commencement
- Types of plans:
 - Modified Job/Alternate Work
 - Direct Placement
 - On-the-job Training
 - Educational Retraining
 - Self-employment

Vocational Rehabilitation Plan (DWC Form RU-102) – page 1 of 4

VOCATIONAL REHABILITATION PLAN		REHABILITATION USE ONLY	
Social Security Number		WCAB Number	Rehab Unit Number
Employee Name (Last)	(First)	(MI)	Date of Birth
Address (Street)	(City)	(State)	(Zip)
Employer Name		Insurance Company Name; Or, if Self-Insured, Certificate Name	
Address		Adjusting Agency Name (if adjusted)	
City, State, Zip		Claims Mailing Address	
Date of Injury	Claim Number	City, State, Zip	Phone No.
Employee Representative		Employer Representative	
Firm Name		Firm Name	
Address		Address	
City, State, Zip	Phone No.	City, State, Zip	Phone No.
Qualified Rehabilitation Representative			
Firm Name Representative Name			
Address (Street, City, State, Zip)			Phone No.

SECTION A

OCCUPATION AT INJURY	EARNINGS AT INJURY
DESCRIBE TYPE OF INJURY AND MEDICAL RESTRICTIONS (both industrial and non-industrial. Also identify medical report relied upon):	
SUMMARY OF EMPLOYEE'S EDUCATIONAL AND VOCATIONAL BACKGROUND AND EXPLANATION OF HOW TRANSFERRABLE SKILLS HAVE BEEN USED IN SELECTION OF THE PLAN OBJECTIVE:	
REHAB UNIT APPROVAL IS REQUIRED DUE TO: Check one: ___ Unrepresented Injured Worker ___ QRR Waiver ___ Pre '94 Dates of Injury ___ Discretionary Monies	
Initials	

(Voc. Rehab.) §10133.13

Mandatory Format
State of California
DWC Form RU-102 (1/03)

Vocational Rehabilitation Plan (DWC Form RU-102) – page 2 of 4

SECTION B			
VOCATIONAL OBJECTIVE	ESTIMATED WEEKLY EARNINGS UPON COMPLETION		
<p style="text-align: center;">Type of Plan</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; padding-right: 20px;"> <p>With Same Employer</p> <p><input type="checkbox"/> 1. Modified Job</p> <p><input type="checkbox"/> 2. Alternative Work</p> </td> <td style="width: 50%; vertical-align: top;"> <p>With New Employer</p> <p><input type="checkbox"/> 3. Direct Placement</p> <p><input type="checkbox"/> 4. On-The-Job Training</p> <p><input type="checkbox"/> 5. Educational Training</p> <p><input type="checkbox"/> 6. Self-Employment</p> </td> </tr> </table>		<p>With Same Employer</p> <p><input type="checkbox"/> 1. Modified Job</p> <p><input type="checkbox"/> 2. Alternative Work</p>	<p>With New Employer</p> <p><input type="checkbox"/> 3. Direct Placement</p> <p><input type="checkbox"/> 4. On-The-Job Training</p> <p><input type="checkbox"/> 5. Educational Training</p> <p><input type="checkbox"/> 6. Self-Employment</p>
<p>With Same Employer</p> <p><input type="checkbox"/> 1. Modified Job</p> <p><input type="checkbox"/> 2. Alternative Work</p>	<p>With New Employer</p> <p><input type="checkbox"/> 3. Direct Placement</p> <p><input type="checkbox"/> 4. On-The-Job Training</p> <p><input type="checkbox"/> 5. Educational Training</p> <p><input type="checkbox"/> 6. Self-Employment</p>		
<p>DESCRIBE NATURE AND EXTENT OF REHABILITATION PLAN:</p>			
<p>DATE VOCATIONAL FEASIBILITY DETERMINED: _____</p> <p>PLAN COMMENCEMENT DATE: _____</p> <p>EXPECTED COMPLETION DATE (Including placement assistance): _____</p> <p>#WEEKS OF TRAINING _____ #DAYS OF PLACEMENT ASSISTANCE _____</p>			
<p style="text-align: center;">INITIALS</p>			

(Voc. Rehab.) §10133.13

Mandatory Format
State of California
DWC Form RU-102 (1/03)

Vocational Rehabilitation Plan (DWC Form RU-102) – page 3 of 4

BUDGET FOR VOCATIONAL REHABILITATION PLAN EXPENDITURES

Identify incurred and estimated costs for this rehabilitation plan. For injuries on or after 1/1/94, the maximum expenditure for vocational rehabilitation expenses shall not exceed \$16,000.

RESOURCES TO EMPLOYEE

\$ _____ Weekly VRMA Rate	\$ _____ withheld for attorney fees;	\$ _____ Payment to employee
VRMA/VRTD paid prior to plan (including attorney fees)		Total: \$ _____
Dates: From _____ to _____		
VRMA/VRTD to be paid during plan (including attorney fees)		Total: \$ _____
Dates: From _____ to _____		
Transportation Expenses to be paid as follows: \$ _____ per _____		Total: \$ _____

PLAN EXPENDITURES

Training/Tuition fees, if any (specify recipient): \$ _____	Total: \$ _____
Other Costs (specific type, recipient and method of payment)	
_____ \$ _____ / _____	Total: \$ _____
_____ \$ _____ / _____	Total: \$ _____
_____ \$ _____ / _____	Total: \$ _____
_____ \$ _____ / _____	Total: \$ _____

FEES FOR EVALUATION, PLAN DEVELOPMENT & PLACEMENT

(List Evaluation and Plan Development fees to date and estimated fees for Plan Monitoring and Placement)			
Phase I:	Evaluation	\$ _____	DOIs on /after 1/1/94 where VR was initiated on/after 1/1/98
Phase II	Plan Development	\$ _____	Phase A: \$ _____
	Plan Monitoring	\$ _____	Phase B: \$ _____
Phase III	Placement	\$ _____	Total: \$ _____
TOTAL ESTIMATE OF PLAN EXPENDITURES:			\$ _____

ADDITIONAL RESOURCES TO EMPLOYEE

Permanent Disability Supplement paid to date: \$ _____ / Week	Total: \$ _____
Permanent Disability Supplement to be paid: \$ _____ / Week	Total: \$ _____
Other resources to be provided to employee (identify source and amount):	
_____ \$ _____ / _____	Total: \$ _____
_____ \$ _____ / _____	Total: \$ _____

SECTION C

1. List results of vocational testing, if any, and how they support the vocational objective:
2. Describe why this employee will be employable in the vocational objective of this plan. Include assessment of labor market.

INITIALS

(Voc. Rehab.) §10133.13

Mandatory Format
State of California
DWC Form RU-102 (1/03)

Vocational Rehabilitation Plan (DWC Form RU-102) – page 4 of 4

SECTION D

RESPONSIBILITIES OF THE CLAIMS ADMINISTRATOR:

The claims administrator shall provide in a timely manner all vocational services and benefits necessitated by the agreed upon vocational rehabilitation plan and as required by the Labor Code. I verify that the insurer does not have a proprietary interest in the rehabilitation provider or facilities used in the development or implementation of this plan.

Other:

Signature

RESPONSIBILITIES OF THE EMPLOYEE:

The employee shall be available and reasonably cooperate in the provision of vocational rehabilitation services. The employee shall arrive on time and participate in all scheduled activities; if for any reason the employee does not, he or she must immediately provide an explanation to the Qualified Rehabilitation Representative.

The employee shall follow the requirements of all facilities and persons providing vocational rehabilitation services. The employee shall notify the Qualified Rehabilitation Representative about anything that may interfere with scheduled completion of this plan.

Other

SECTION E

VERIFICATION OF THE QUALIFIED REHABILITATION REPRESENTATIVE

1. This plan was developed by me as the Qualified Rehabilitation Representative or as an Independent Vocational Evaluator. It is my opinion that the services contained in this plan will provide the employee with the opportunity to return to suitable gainful employment.
2. The employee was not referred for services for evaluation, education or training to a facility in which I, my spouse, my employer or co-employee has a proprietary interest or which I, my spouse, my employer or co-employee has a contractual relationship.

Signature

Date

Firm Name & Address

SECTION F

PLAN AGREEMENT

Signature of the claims administrator and employee on this plan shall be deemed to be an agreement that claims administrator and employee intend to comply with all the plan's provisions.

Failure of the claims administrator to provide in a timely manner all services required by the plan may result in the employee being entitled to additional services.

Failure of the employee to comply with the provisions and schedules developed for this plan may result in termination of the employer's liability for rehabilitation services.

I have read and understand all four pages of this plan and agree with all of the plan's provisions.

NAME OF EMPLOYEE

SIGNATURE

DATE

NAME OF EMPLOYEE REPRESENTATIVE (if any):

SIGNATURE

DATE

PERSON AUTHORIZING THE PROVISION OF THIS PLAN ON BEHALF OF THE EMPLOYER/CLAIMS ADMINISTRATOR
NAME

SIGNATURE

DATE

PERSONS SIGNING THIS SECTION SHALL ALSO INITIAL THE OTHER THREE PAGES IN THE INITIAL BOX

(Voc. Rehab.) §10133.13

Mandatory Format
State of California
DWC Form RU-102 (1/03)

Termination of Liability

- LC 4644 The liability of the employer for vocational rehabilitation services shall terminate when any of the following events occur:
 - The employee declines and signs RU-107 form.
 - The employee completes a rehabilitation plan.
 - The employee unreasonably fails to complete a vocational rehabilitation plan.
 - The employee has not requested vocational rehabilitation within 90 days of offer The employer offers and the employee accepts/rejects modified work lasting 12 months, even if the employee voluntarily quits prior to the end of the 12 month period
 - The employer offers and the employee accept/rejects alternate work meeting all the conditions listed in Labor Code 4644 (a)(6).
 - The employer offers and the employee accepts job not meeting criteria listed above.

Notice of Termination of Vocational Rehabilitation Benefits (DWC Form RU-105) Front – Dates of Injury On or After 1/1/90

NOTICE OF TERMINATION OF VOCATIONAL REHABILITATION SERVICES		Rehabilitation Use Only	
Social Security Number		WCAB Number	
Rehab Unit Number			
Employee Name (Last)	(First)	(MI)	Date of Birth
Address (Street)		(City)	(State) (Zip)
Employer Name		Insurance Company Name; Or, if Self-Insured, Certificate Name	
Address		Adjusting Agency Name (if adjusted)	
City, State, Zip		Claims Mailing Address	
Date of Injury	Claim Number	City, State, Zip	Phone No.
Employee Representative		Employer Representative	
Firm Name		Firm Name	
Address		Address Phone No.	
City, State, Zip Phone No.		City, State, Zip	
Qualified Rehabilitation Representative			
Firm Name		Representative Name	
Address (Street, City, State, Zip)		Phone No.	

CLOSURE REASONS (Check one box which applies)

- ☐ 1. The employee declines and has signed the RU-107 or RU-107A.
- ☐ 2. The qualified employee completes a vocational rehabilitation plan.
- ☐ 3. The qualified employee unreasonably fails to complete a vocational rehabilitation plan.
- ☐ 4. The employee has not requested vocational rehabilitation within 90 days.
- ☐ 5. The employer offers and the employee accepts/rejects modified work lasting 12 months, even if the employee voluntarily quits prior to the end of the 12 month period. *(Attach RU-94)*
- ☐ 6. The employer offers and the employee accepts/rejects alternative work meeting all of the conditions listed in Labor Code §4644(a)(6). Attach RU-94.
- ☐ 7. The employer offers and the employee accepts a job not meeting criteria of #5 or #6. *(Attach RU-94)*

NOTICE TO EMPLOYEE

If you agree with the above, no further action is required on your part, and we will not be providing vocational rehabilitation services in the future.

If you disagree with our determination that we have no further liability to provide vocational rehabilitation services, you or your representative must submit your written objections and the reasons for them to the Rehabilitation Unit within twenty (20) days of receipt of this Notice. The form to use to make your objection is enclosed. Be sure to send a copy to me. The Rehabilitation Unit will then determine if you are to be given further services. Please send a copy of this Notice, with your objection, to the Rehabilitation Unit located at: *(insert Rehabilitation Unit address)*

If you have any questions about this notice, you may contact me at: _____.

(Voc. Rehab.) §10133.16

Mandatory Format
State of California
DWC Form RU-105 (01/03)

Notice of Termination of Vocational Rehabilitation Benefits (DWC Form RU-105) Back – Dates of Injury On or After 1/1/90

SUMMARY OF SERVICES PROVIDED	
<p>Number of weeks of VRMA: \$ _____ (Within the cap)</p> <p>Total Amount of paid VRMA: \$ _____ (Within the cap)</p> <p>Total Amount of PD supplement: \$ _____</p> <p>Amount Paid for QRR: \$ _____</p>	<p>RU-94 Offer</p> <p><input type="checkbox"/> Modified Job (L.C. 4644 (a)(5)) <input type="checkbox"/> Alternate Job (L.C. 4644 (a)(6)) <input type="checkbox"/> "Other Job" (L.C. 4644 (a)(7))</p> <p>Did employee RTW? Yes _____ No _____</p> <p>If Yes, employee's new job title: _____</p> <p>Wages: \$ _____ per _____ (Hour/Week/Month)</p>
<p style="text-align: center;">DOIs on/after 1/1/94</p> <p>VR initiated before 1/1/98 VR initiated on/after 1/1/94</p> <p>Phase I: \$ _____ Phase A: \$ _____</p> <p>Phase II: \$ _____ Phase B: \$ _____</p> <p>Phase III: \$ _____</p> <p>Total Cost of QRR Services: \$ _____</p> <p>QRR Name: _____</p> <p>Total Cost of Other VR Services: \$ _____</p> <p>Amt. Withheld for Employee's Attorney (if any) \$ _____</p>	<p>Plan Completion</p> <p>Plan Type</p> <p><input type="checkbox"/> Direct Placement <input type="checkbox"/> OJT <input type="checkbox"/> Training</p> <p><input type="checkbox"/> Self Employment <input type="checkbox"/> Modified Job <input type="checkbox"/> Alternate Job</p> <p>Employed in Plan Objective: Yes _____ No _____</p> <p>If Yes, employee's new job title: _____</p> <p>Wages: \$ _____ per _____ (Hour/Week/Month)</p>

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the County of: _____. I am over the age of eighteen years and not a party to the within matter. My business address is: _____.

On _____, I served the Notice of Termination of Vocational Rehabilitation Services on the parties listed below by placing a true copy thereof enclosed in a sealed envelope with postage fully prepaid, and thereafter deposited in the U.S. Mail at the place so addressed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at _____ on _____ 20_____.

Signature

Copies Served On:

(Voc. Rehab.) §10133.16

Mandatory Format
State of California
DWC Form RU-105 (01/03)

Disputes in Vocational Rehabilitation

- An Informal Conference must be sought before requesting a Rehabilitation Unit (Formal Conference).
- Rehabilitation Unit (Formal) Conference
 - If parties are unable to resolve disputed rehabilitation issues, any party may file a *Request for Dispute Resolution* form (RU-103).
 - The Rehabilitation Unit Consultant will schedule a conference to try to resolve the issues.
 - If parties are unable to resolve issues, the consultant will issue a determination.
 - Either party may appeal determination to the Workers' Compensation Appeals Board.
 - Rehabilitation Unit Consultant will base their determination on:
 - The California Labor Code
 - The Administrative Rules/Regulations
 - Administrative Guidelines
 - The Standards Governing Timeliness and Quality of VR Services

Request for Dispute Resolution (DWC Form RU-103)

Request for Dispute Resolution ___ Original ___ Response		Has employer accepted this claim? ___ Yes ___ No Has liability for injury been found by the WCAB? ___ Yes ___ No Has more than 90 days of TTD been paid? ___ Yes ___ No		Rehabilitation Use Only	
Social Security Number		WCAB Number		Rehab Unit Number	
Employee Name (Last)		(First)		(MI) Date of Birth	
Address (Street)		(City)		(State) (Zip)	
Employer Name			Insurance Company Name; Or, if Self-Insured, Certificate Name		
Address			Adjusting Agency Name (if adjusted)		
City, State, Zip			Claims Mailing Address		
Date of Injury		Claim Number		City, State, Zip Phone No.	
Employee Representative			Employer Representative		
Firm Name			Firm Name		
Address			Address		
City, State, Zip		Phone No.		City, State, Zip Phone No.	
Qualified Rehabilitation Representative Firm Name Representative Name					
Address (Street, City, State, Zip) Phone No.					
The Rehabilitation Unit is requested to resolve the following dispute on an expedited basis because the parties disagree on : (Check the single issue which applies) ___ The identification of a vocational goal (for injuries after 1/1/94) ___ The description of the employee's job duties at the time of injury (for injuries after 1/1/94) ___ The selection of a Independent Vocational Evaluator ___ The employee objects to the attached Notice of Intent to Withhold Maintenance Allowance					
Non-Expedited Issues: (Check the issue(s) that apply) ___ The employee objects to a Notice of Termination ___ The employee's medical eligibility for vocational rehabilitation services. Medical report relied upon by requester: _____ ___ The employer has failed to provide vocational rehabilitation services and benefits. My QRR preference is: (if any) _____ On what date should the employer have provided vocational rehabilitation services? ___ / ___ / ___ (Attach explanation) Date last worked ___ / ___ / ___ Date of last temporary disability ___ / ___ / ___ ___ The employee requested reinstatement and the employer failed to respond. On what date was request made to claims administrator? ___ / ___ / ___ How does the employee substantiate this request? [Attach supporting document(s)] ___ This is in response to a previously submitted RU-103 dated ___ / ___ / ___ ___ Other disputed issues (please describe the nature): _____					
Summary of Parties' Informal Efforts to Resolve this Dispute An informal conference was held on _____. A summary of the conference, including a list of attendees, issues addressed, agreements reached and other unresolved issues is attached. If an informal conference was not held, attach explanation.			Copies of this request with copies of medical and vocational reports have been served on:		
Name of Requester		Date		Signature	

(Voc. Rehab.) §10133.14

Mandatory Format
 State of California
 DWC Form RU-103 (01/03)

Settlement of Prospective Vocational Rehabilitation Services

- LC 4646 (b)
- (a) Settlement or commutation of prospective vocational rehabilitation services shall not be permitted under Chapter 2(commencing with Section 5000) or Chapter 3 (commencing with Section 5100) of Part 3 except as set forth in subdivision (b), or upon a finding by a workers' compensation judge that there are good faith issues that, if resolved against the employee, would defeat the employee's right to all compensation under this division.
- (b) The employer and a represented employee may agree to settle the employee's right to prospective vocational rehabilitation services with a one-time payment to the employee not to exceed ten thousand dollars (\$10,000) for the employee's use in self-directed vocational rehabilitation. The settlement agreement shall be submitted to, and approved by, the administrative director's vocational rehabilitation unit upon a finding that the employee has knowingly and voluntarily agreed to relinquish his or her rehabilitation rights. The rehabilitation unit may only disapprove the settlement agreement upon a finding that receipt of rehabilitation services is necessary to return the employee to suitable gainful employment.
- (c) Prior to entering into any settlement agreement pursuant to this section, the attorney for a represented employee shall fully disclose and explain to the employee the nature and quality of the rights and privileges being waived.

Settlement of Prospective Vocational Rehabilitation Service (DWC Form RU-122) – page 1 of 3

Page 1 of 3

SETTLEMENT OF PROSPECTIVE VOCATIONAL REHABILITATION SERVICES [LC § 4646 (b)]			REHABILITATION USE ONLY				
Social Security No:		Claim Number:		WCAB Case No. (if any):		RU Case No. (if any):	
Employee Name (Last) (First) (MI)				Date of Birth			
Address (Street) (City) (State) (Zip Code)							
Date of Injury				If Self Insured, Certificate Name or Insurer Name			
Employer Name				Adjusting Agency Name (if adjusted)			
Employer Address				Claims Mailing Address			
City, State, Zip Code				City, State, Zip Code			
Employee's Attorney				Employer's Representative			
Firm Name				Firm Name			
Address				Address			
City, State, Zip Code Phone No.				City, State, Zip Code Phone No.			
Qualified Rehabilitation Representative (if any)							
Firm Name							
Address							
City, State, Zip Code Phone No.							
<p>In accordance with Labor Code 4646:</p> <p>1. The parties to this agreement are the employee _____ and the employer or claims administrator _____.</p> <p>2. All parties agree that any vocational rehabilitation benefits paid and accrued prior to the date this agreement has been signed are separate and distinct funds from the amount settled in this agreement.</p>							

MANDATORY FORMAT

STATE OF CALIFORNIA

DWC FORM RU-122 01/03

Settlement of Prospective Vocational Rehabilitation Service (DWC Form RU-122) – page 2 of 3

Page 2 of 3

3. The parties hereby agree to settle the employee's right to prospective Vocational Rehabilitation services with a one-time payment to the employee for the sum of \$ _____, less the sum of \$ _____, as reasonable attorney's fee. The requested attorney's fee will be held in trust by the employer subject to approval and subsequent order by the Workers' Compensation Appeals Board.

4. The employee's attorney has fully disclosed and explained to the employee the nature and quality of the rights and privileges being waived and settled by the parties. The employee has knowingly and voluntarily agreed to relinquish his or her rehabilitation rights.

Employee's signature _____ Date _____

Employee's Attorney's signature _____ Date _____

Qualified Interpreter's signature _____ Date _____
(if needed)

5. The employee understands and agrees that the settlement is to be applied to his/her self-directed vocational rehabilitation, such as direct placement, training, self-employment.

Signatures

Employee _____ Date _____

Employee's Attorney _____ Date _____

Employer's Representative _____ Date _____

Determination of the Rehabilitation Unit

The Rehabilitation Unit has reviewed this Settlement Agreement pursuant to Labor Code § 4646 (b) and (c). The Rehabilitation Unit, hereby, **approves** this Settlement Agreement.

Rehabilitation Unit Consultant _____ Date _____

OR

The Rehabilitation Unit has reviewed the Settlement Agreement pursuant to Labor Code § 4646 (b) and it is, hereby, **disapproved**. Reason for Disapproval: _____

Rehabilitation Unit Consultant _____ Date _____

The Rehabilitation Unit shall approve or disapprove the settlement agreement of vocational rehabilitation. If disapproval is not made within ten (10) days of receipt of a fully executed agreement, the agreement shall be deemed approved.

This Agreement is Final. Any aggrieved party must file an appeal with the Workers' Compensation Appeals Board within twenty (20) days from the date this Agreement is approved, deemed approved or disapproved.

Settlement of Prospective Vocational Rehabilitation Service (DWC Form RU-122) – page 3 of 3

Page 3 of 3

If Vocational Rehabilitation Services were commenced:

Summary of Services Provided

Number of weeks of VRMA: _____

Total Amount VRMA Paid: \$ _____

Total Amount of PD Supplement: \$ _____

Amount Paid QRR for:

DOI's on or after 1/1/03

Phase A: \$ _____

Phase B: \$ _____

Total costs of QRR services \$ _____

QRR Name _____

Total other costs of rehabilitation services: \$ _____

Amount withheld for Employee's Representative, if any: \$ _____

If plan developed, plan type: _____

Completed by: _____ Date: _____

Roles and Responsibilities

Department of Personnel Administration Responsibilities

The Department of Personnel Administration's (DPA) Workers' Compensation and Safety Program (WCSP) is responsible for managing the States Workers' Compensation Program.

The role and responsibilities of the DPA shall include but are not limited to:

- The Department of Personnel Administration (DPA) shall work with State Fund and the departments to ensure that employees are returned to work in the most expeditious manner.
- DPA, in conjunction with State Fund, will provide training to the Return to Work Coordinators (RTWC) on finding alternative positions for injured workers.
- DPA shall provide guidelines to the departments on assisting injured workers' return to work.
- DPA shall monitor departments and State Fund for compliance with applicable laws, regulations, executive orders, and policies and procedures.
- DPA, with the assistance and cooperation of State Fund vocational rehabilitation staff, will develop training materials for vocational rehabilitation counselors on returning state employee back to State service. The training material will be developed within 6 months of the inception of this agreement.

State Fund's Responsibilities

State Fund utilizes in-house Vocational Rehabilitation Coordinators (VRC) to oversee the provision of vocational rehabilitation benefits to injured workers. Once the injured worker has been determined to be medically eligible, has been offered vocational rehabilitation services, and has requested services, the VRC, in conjunction with the employee, or the injured worker's attorney, if represented, decide on an Agreed Qualified Rehabilitation Representative (QRR).

The QRR agreement will be confirmed in writing and will give details as to what services will be provided. The VRC continues to oversee the provision of vocational rehabilitation benefits, including plan authorization and dispute resolution. The VRC is available to assist the QRR with efforts to return State employees to State service.

The role and responsibilities of State Fund shall include but are not limited to:

- State Fund shall be responsible for ensuring the provision of vocational rehabilitation benefits when an injured worker is entitled to those benefits. State Fund shall provide these benefits in accordance with the Labor Code and the
- Regulations set forth by the Division of Workers' Compensation.
- State Fund shall find out from the department whether a modified or alternative position is available. If a position is not available and the employee is, or is presumed to be, a qualified injured worker (QIW), State Fund will refer the employee for vocational rehabilitation services.
- The State Fund VRC will give written notice to the department when an employee becomes, or is presumed to be, a QIW and will provide the medical limitations to the RTWC to facilitate the search for an alternative position.
- The State Fund VRC will consult with the RTWC during the development phase of a plan and prior to agreeing to a plan. State Fund will give first consideration to a viable vocational rehabilitation plan that returns the injured worker to State service.
- Copies of all Rehabilitation Unit (RU) Forms, vendor reports, and Decisions and Orders from the Rehabilitation Unit will be sent to the RTWC by the State Fund VRC at the department's request.
- State Fund's VRC will make the determination that a proposed plan should be approved, if the department does not have an alternative job available for the employee. State Fund will give first priority to viable vocational rehabilitation plans that provide the injured worker with the skills needed to return to State service.
- State Fund will attempt to utilize a QRR who (1) has experience and/or has been trained on the process for obtaining and maintaining a job in State service, and (2) has a working knowledge of the Americans with Disabilities Act, the Fair Employment and Housing Act, and the process of reasonable accommodation.
- State fund shall notify the RTWC when paying expenses outside the vocational rehabilitation cap or when authorizing retroactive benefits.

Employer Responsibilities

Each State department is required to designate a Return-to-Work Coordinator (RTWC), Departmental Claims Coordinator (DCC), or departmental designee who is responsible for facilitating the early return to work of the department's injured employees. This individual is also responsible for monitoring the administration of a department's workers' compensation claims and case management. In the event an employee becomes disabled and cannot perform the duties of his or her usual and customary position, it is typically the RTWC's role to help the injured worker with identifying any viable employment available in the department.

The role and responsibilities of the employer departments shall include but are not limited to:

- Comply with the applicable Sections of the Government Code, Labor Code, California Code of Regulations, and Executive Order D-48-85 regarding returning employees to work and actively seek employment opportunities for employees who become disabled.
- Identify the RTWC or departmental designee who is responsible for assisting the injured worker in returning to work.
- Identify the classification(s) for which the injured worker qualifies and that fit within provided work restrictions.
- Provide the injured worker with information regarding the Injured State Workers' Assistance Program (ISWAP). If the injured worker would like to participate in ISWAP, submit an application for the ISWAP listing up to six classifications.
- Conduct a job search of all vacant departmental positions fitting both the injured worker qualifications and work restrictions.
- Notify the QRR if a position is located and send a job analysis or description to the QRR for submission to the primary treating physician for review and comment prior to placing the injured worker in the position.
- Work cooperatively with the QRR in locating a position within the originating department.
- The RTWC or departmental designee shall provide information to State Fund that could impact plan selection or development within 10 calendar days of receiving State Fund's notice that the injured worker has accepted vocational rehabilitation. This information should include but is not limited to the availability of modified or alternate work, requested job descriptions, or other information required by the Division of Workers' Compensation.

- The RTWC or departmental designee shall express in writing (e-mail, FAX or letter) any concerns about the proposed goal within 15 calendar days of receiving notice of the plan.
- The RTWC or departmental designee shall cooperate with the State Fund VRC and the QRR when the need arises for a job analysis or related purposes.
- The RTWC or departmental designee shall be available upon request to attend Division of Workers' Compensation Rehabilitation Unit proceedings (e.g., formal conferences, trials).

Qualified Rehabilitation Representative Responsibilities

State Fund requires that each Qualified Rehabilitation Representative (QRR) have on file with the Risk Management Department of State Compensation Insurance Fund a current certificate (or memorandum) of insurance showing professional liability of at least \$1 million per occurrence and \$3 million in aggregate.

The role and responsibilities of the agreed-upon QRR shall include but are not limited to:

- Clarify and identify the injured worker's medical work restrictions (mental or physical) as contained in the medical record.
- Identify limitations that may affect successful return to suitable gainful employment.
- Clarify with the employer the work restrictions provided by the State Fund VRC to facilitate a departmental search of available vacant positions for which the injured worker qualifies and which fit within documented work restrictions.
- Identify/clarify with the RTWC the job classifications for which the injured worker is qualified to reinstate or transfer to and which fit within the injured worker's work restrictions.
- Prior to placing the injured worker in a vacant position, send the job analysis or description to the primary treating physician for review and approval.
- Provide a list of the potential job classifications to the employer to assist in the inter-departmental search.
- Provide the injured worker with information regarding the ISWAP. If the injured worker would like to participate in ISWAP, notify the RTWC to initiate the process.

- Help the injured worker develop a resume and complete the California State Government Examination/Employment Application (Std. 678).
- Assist the injured worker in a job search utilizing all available resources.
- If the injured worker is required to interview for a position outside the original department, counsel him or her on interviewing skills.
- If a position is located in the original department, notify the employer designee and State Fund VRC immediately.

Injured Employee Responsibilities

The roles and responsibilities of the State employee should include but are not limited to:

- Work cooperatively with both the QRR and the employer to identify, locate, and obtain suitable gainful employment.
- Provide any medical documentation outlining current or permanent work restrictions.
- Fully participate in developing and completing a vocational rehabilitation plan.

Supplemental Job Displacement Benefit (SJDB)

SJDB replaces vocational rehabilitation benefits for eligible injured employees injured on or after January 1, 2004. There is no qualified injured worker threshold requirement as in vocational rehabilitation benefits. In addition, an injured employee does not receive VRMA.

To be eligible for SJDB, the injured employee must meet the following criteria:

- Has to have permanent partial disability; and
- Hasn't returned to work for his or her date of injury employer within 60 days of TD ending.

The employer is not liable for the SJDB if the employer offers a modified or alternative job within 30 days of TD ending, meeting the following criteria:

- Paying at least 85% of the salary at the date of injury;
- Lasting at least 12 months;
- Within a reasonable distance; and
- The injured employee can perform the essential functions of the job.

The SJDB is a voucher for a educational retraining or skill enhancement program at a state approved or accredited school. The voucher can range in value up to \$10,000 based on the level of an injured employee's permanent disability and can be used towards tuition, fees, books, up to 10% for vocational rehabilitation counselor services, and other related expenses. The table below states shows the voucher amount based on the injured employees level of disability:

Voucher Amount	Permanent Partial Disability
Up to \$4000	1 to 14%
Up to \$6000	15 to 25%
Up to \$8000	26 to 49%
Up to \$10000	50 to 99%

It is important that the employer continue to work with SCIF to return the injured employee back to modified or alternative work if available. An employer needs to continually check the availability of modified or alternative work that meets the aforementioned criteria. If such work is available, the employer needs to contact SCIF immediately.

Disability Employment Law Overview

for Return-to-Work Coordinators



**Creating Employment Opportunities
for Californians with Disabilities**



THE 10 COMMANDMENTS of Communicating with People with Disabilities

- I. Speak directly rather than through a companion or sign language interpreter who may be present.
- II. Offer to shake hands when introduced. People with limited hand use or an artificial limb can usually shake hands and offering the left hand is acceptable greeting.
- III. Always identify yourself and others who may be with you when meeting someone with a visual disability. When conversing in a group, remember to identify the person to whom you are speaking.
 - When dining with a friend, who has a visual disability, ask if you can describe what is on his or her plate.
- IV. If you offer assistance, wait until the offer is accepted. Then listen or ask for instructions.
- V. Treat adults as adults. Address people with disabilities by their first names only when extending the same familiarity to all others. Never patronize people in wheelchairs by patting them on the head or shoulder.
- VI. Do not lean against or place your hand on someone's wheelchair. Bear in mind that people with disabilities treat their chairs as extensions of their bodies.
- VII. Listen attentively when talking with people who have difficulty speaking and wait for them to finish. If necessary, ask short questions that require short answers, or a nod of the head. Never pretend to understand; instead repeat what you have understood and allow the person to respond.

- VIII. Place yourself at eye level when speaking with someone in a wheelchair or on crutches.
- IX. Tap a person who has a hearing disability on the shoulder or wave your hand to get his or her attention. Look directly at the person and speak clearly, slowly, and expressively to establish if the person can read your lips. If so, try to face the light source and keep hands, cigarettes and food away from your mouth when speaking.
- If a person is wearing a hearing aid, don't assume that they have the ability to discriminate your speaking voice.
 - Never shout at a person. Just speak in a normal tone of voice.
- X. Relax. Don't be embarrassed if you happen to use common expressions such as "See you Later" or "Did you hear about this?" that seem to relate to a person's disability.

This video is available on loan to state departments through the State Personnel Board. For video request form, go to SPB's website: www.spb.ca.gov/CIVILRIGHTS/disability_info.htm

"The 10 Commandments" were adapted from many sources as a public service by United Cerebral Palsy Associations, Inc. (UCPA). UCPA's version of "The Ten Commandments" was updated by Irene M. Ward & Associates (Columbus, Ohio), also as a public service, and to provide the most current language possible for its video and DVD entitled, "The 10 Commandments of Communicating with People with Disabilities".

Video & Trainer Guide, distributed by: Program Development Associates, Post Office Box 2038, Syracuse, NY 13220-2038. Phone: 800-543-2119, Fax: 315-452-0710. Web site: www.disabilitytraining.com

DISABILITY EMPLOYMENT LAW

- Prohibits employment discrimination against individuals with disabilities.
- Requires employers and employees to engage in a timely, good faith, interactive process to make a reasonable accommodation to a known physical or mental limitation.
- Allows an exception to providing such an accommodation if it would impose an undue hardship on the employer or pose a direct threat to an individual with a disability or others.

APPLICABLE LAWS

STATE

- Fair Employment and Housing Act (FEHA)
- Assembly Bill 2222 (2001)
- Assembly Bill 925 (2002)
- Assembly Bill 1950 (2003)
- Government Code Sections 11135 and 19170

FEDERAL

- Title I and Title IV of the Americans with Disabilities Act (ADA)
- Rehabilitation Act of 1973
- Telecommunications Act of 1996

INDIVIDUAL LIABILITY

INDIVIDUALS MAY BE LIABLE AS:

- Harassers
- Any person who retaliates against a person who engages in protected activity
- Any person who aids or abets conduct prohibited by FEHA

EMPLOYMENT PRACTICES COVERED

Includes but not limited to:

PRE-EMPLOYMENT

- Recruitment
- Application
- Medical Exam/Inquiry
- Testing
- Hiring

EMPLOYMENT

- Evaluation
- Disciplinary Actions
- Training
- Promotion
- Fitness For Duty Exams
- Layoff/Call Back
- Termination Procedures
- Compensation
- Leaves
- Benefits

CRITERIA THAT MUST BE MET TO BE PROTECTED BY DISABILITY EMPLOYMENT LAW

- A physical or mental disability or medical condition that limits one or more major life activities.
- A record or history of such an impairment known to the employer.
- Being regarded or treated as having such an impairment even if it has no present disabling effects.
- By association with a person who has a disability.

Note: The categories listed above are the 3 most common ways an individual with a disability is protected. Please review FEHA for specific definitions.

QUALIFIED FOR THE JOB

Any applicant or employee must be qualified for the job.

- 1) The applicant or employee must meet the necessary prerequisites (minimum qualifications or MQ's) of the job such as:
 - Education
 - Work Experience
 - Training
 - Skills
 - Licenses
 - Certificates
 - Other job related requirements(Examples: using good judgment, ability to work with people, etc.)
 - 2) The applicant or employee must be able to perform the essential functions of the job **with or without reasonable accommodation.**
-

ESSENTIAL FUNCTIONS

- The position exists to perform the function.
- There are a limited number of other employees available to perform the function or among whom the function can be distributed.
- A function is highly specialized, and the person in the position was hired for their special expertise and ability.

REASONABLE ACCOMMODATION

BASIC PRINCIPLES

- Both parties are required to engage in a **timely, good faith, interactive** process.
- Generally, the individual with a disability informs the supervisor of the need for reasonable accommodation. There may be situations where the employer may decide to be pro-active in providing an accommodation for a known disability on a case-by-case basis.
- Reasonable accommodations are required for an employee with a disability when there are barriers to performing essential functions of the job.
- It is the responsibility of the employer and employee to work together to make appropriate accommodation choices, as long as the choices are effective.
- An individual is NOT required to accept an accommodation that assists them in performing the essential job functions. However, if an employee refuses an accommodation that would have effectively removed the barriers and allowed the employee to perform the essential job functions, the employee may be deemed to have failed to cooperate with the interactive process.

Note: Assembly Bill 1950 amends CA Government Code Section 19170 to provide for state employees with disabilities an additional 6 months probationary period, subject to the approval of the State Personnel Board, to provide a reasonable accommodation to the employee and for the employee to demonstrate their ability to satisfactorily perform the essential functions of the job.

INTERACTIVE PROCESS

- 1) Generally, the individual with a disability informs the supervisor of the need for a reasonable accommodation. However, there may be situations where the employer may need to be pro-active in providing an accommodation for a known disability on a case-by-case basis.
- 2) If necessary, the employer may gather medical or other pertinent information and documentation to substantiate the need for a reasonable accommodation and to identify the barriers that impact the person's ability to perform the essential functions of the job.
- 3) The employer and employee both explore all possible reasonable accommodation solutions. Both parties assess the reasonableness of each accommodation in terms of effectiveness and equal opportunity for the employee.
- 4) The employer implements the most effective solution, taking into consideration the employee's preferences and that does not impose an undue hardship on the employer's operation.
 - It is the employer's responsibility to choose the specific accommodation after giving consideration to the preferences of the employee or applicant. An accommodation need not be the best accommodation available as long as it is effective.
 - An individual is NOT required to accept an accommodation necessary to perform the essential functions of the job. However, if an employee refuses an accommodation that would have effectively removed the barriers and allowed the employee to perform the essential functions, the employee may be deemed to have failed to cooperate with the Interactive Process.
- 5) It is the employer's responsibility to engage in ongoing monitoring for effectiveness of the accommodation(s) and any changes in the employee's ability to perform the essential functions of the job.

REASONABLE ACCOMMODATION

EXAMPLES

- Making existing facilities accessible to and useable by workers with disabilities
- Job restructuring
- Modifying work schedules
- Reassignment to a vacant position
- Adjusting or modifying exams, training, materials or policies
- Acquiring or modifying equipment or devices
- Providing qualified readers or interpreters

DISABILITY INQUIRIES

What questions may be directed to an individual depend largely upon whether the individual is an applicant for a position or is currently employed by the employer.

- Medical examinations are only allowed after a conditional job offer is made.
- Post-offer medical examinations are permissible only where all entering employees in similar positions are required to submit to such exams.
- The results of a medical examination are treated as confidential medical records and must be maintained in separate files.
- Any medical related inquiries must be job related and consistent with business necessity.
- Medical inquiries to help determine the most appropriate reasonable accommodation may be obtained but must be limited to the individual's functional limitations rather than the nature of the severity of the disability or diagnosis.

Consult with your Personnel office or ADA Coordinator. Some agencies or departments may already have procedures and forms available.

INTERVIEW ETIQUETTE

- Focus on Ability NOT DIS-ability.
- Most of the time the applicant or employee will be the one to disclose the disability. Obvious disabilities can only be addressed as far as functional limitations that may affect the ability to do the essential functions of the job.
- An applicant or employee is not required to disclose a disability. However, applicants and employees that have a functional limitation that would affect their ability to do the essential functions of the job are encouraged to disclose so that the interactive reasonable accommodation process can begin.
- An employer has a right to hire the most qualified applicant who can perform the essential functions of the job. However, the employer must provide equal opportunity for everyone to compete for the position.
- For a known disability only the functional limitation(s) should be addressed, not the disability.
- Never seek the “nature or severity” (i.e. the diagnosis) of the disability (this one goes beyond “etiquette”: it is illegal)
For example, you should never ask the person:
“What is wrong with you, what do you have?”
“How bad is your condition, is that going to get worse?””

UNDUE HARDSHIP

The concept of undue hardship includes any action that is:

- 1) Unduly costly*
- 2) Extensive
- 3) Substantial
- 4) Disruptive, or
- 5) That would fundamentally alter the nature or operation of the business.

*The nature of the cost of an accommodation that is considered in determining undue hardship will be the actual cost to the employer.

HEALTH AND SAFETY OF AN INDIVIDUAL WITH A DISABILITY OR OTHERS

The accommodation presents a risk of harm to self or others in such a way that it meets **all** of the following criteria:

1. Significant risk of substantial harm
2. The specific risk must be identified
3. The risk must be current, not one that is speculative or remote
4. The assessment of risk must be based on objective medical or other factual evidence regarding a particular individual

If the 4 criteria above are met, the employer must consider whether the risk can be eliminated or reduced below the level of “direct threat” by reasonable accommodation.

COMPLAINT PROCEDURES

In State Government

The California Department of Fair Employment and Housing (DFEH), the Federal Equal Employment Opportunity Commission (EEOC) and the State Personnel Board (SPB) maintain the authority to investigate complaints of employment discrimination.

Discrimination complaints can be filed with the Federal Equal Employment Opportunity Commission (EEOC) for alleged violations of the federal Americans with Disabilities Act.

- If the state agency exists in California, the Federal EEOC advises that the state entity (DFEH) should pursue the investigation first.
- An employee/applicant has **one year** from the alleged discrimination to file the complaint with DFEH.

For more information about the discrimination complaint process, contact:

California Department of Fair Employment and Housing

Phone: (800) 884-1684

Sacramento and Out of State: (916) 227-0551

TTY Number: (800) 700-2320

Website: www.dfeh.ca.gov/complaint.asp

Federal Equal Employment Opportunity Commission

Phone: (800) 669-4000

TTY: (800) 669-6820

Los Angeles Phone: (213) 894-1000

Los Angeles TTY: (213) 894-1121

San Francisco Phone: (415) 356-5100

San Francisco TTY: (415) 356-5098

Website: www.eeoc.gov

State Personnel Board

801 Capitol Mall, Sacramento, CA 95814

P.O. Box 944201, Sacramento, CA 94244-2010

Phone: (916) 653-1705

Website: www.spb.ca.gov

CASE SCENARIO EXERCISES

Team Instructions: Review and discuss assigned case scenarios as a team. Identify an appropriate and effective course of action(s) for each individual.

A physician's evaluation of a candidate who is offered a position as Psychiatric Technician indicates that the individual has a disc condition that might worsen in 8-10 years, if required to do heavy lifting. The Department concludes that to allow the person to perform the duties of a Psychiatric Technician would pose a "direct threat" to his health and safety and withdraws its offer of employment.

A candidate who is blind was denied a reasonable accommodation request for a reader in the written examination for a Dispatcher job with the California Highway Patrol. A key part of the written test included a test of the candidate's ability to read detailed street maps quickly in order to dispatch emergency help.

A Registered Nurse who had been medically separated from her position at a State hospital attempts to reinstate at the veterans' home. In checking her references, the veterans home learns from the State hospital that the individual had filed a Worker's Compensation claim for a back injury. Based on this information, it decides not to reinstate the individual. The individual files a charge of discrimination against the veteran's home and a charge of violation of civil rights against the state hospital, seeking \$300,000 in damages from both agencies.

A Rehabilitation Counselor who uses a wheelchair, a walker, and a cane to assist with her mobility applies for a transfer to a vacant Counselor position at a State hospital. The position is on a Nursing Unit which houses patients who are known to display violent tendencies. The interviewing panel does not express any concerns about her ability to do the job. She has had several years of experience working with similar types of patients. She is conditionally offered the job following a medical examination. The Medical Officer who reviewed the information considered her as medically disqualified because of her confinement to a wheelchair which would place

her at imminent and substantial risk of harm in the event of a violent disturbance and not being able to quickly evacuate the Nursing Unit.

A Registered Nurse at a State hospital is injured on the job and cannot perform the essential functions of her job. She accepts a voluntary demotion to a Clerical position that the hospital offered. Over several months, she recovers from her injuries and is cleared to return to Nursing duties. The hospital refuses to return her to a Nursing position and argues that her return rights are discretionary since the demotion was voluntary.

A hospital Peace Officer sustains a job related injury and can no longer perform the essential functions of his job. He requests an alternate placement. There are no appropriate vacant positions at the hospital. The hospital denies his request and sends him to vocational rehabilitation. Upon completion of the vocational rehabilitation, the hospital medically separates the employee.

LOCAL RESOURCES

Having knowledge of available resources is important. From pre-hire to retirement, there are many questions that may arise about decisions that affect the workplace. Listed below are resources available when employment related questions arise. (Please fill in contact information where appropriate.)

Internal Agency Resources

- Your Supervisor
- Equal Employment Office Manager or ADA Coordinator:
Contact information: _____
- Your Legal Counsel:
Contact information: _____

External Agency Resources



Enforcement & Technical Assistance

- Equal Employment Opportunity Commission (EEOC) - Federal
- Department of Fair Employment and Housing (DFEH) - State
- State Personnel Board (SPB) – State

Technical Assistance only

- Department of Rehabilitation (DOR), Disability Access Section
- Job Accommodation Network (JAN)

WEB RESOURCES

- **California Department of Rehabilitation**
www.dor.ca.gov
Information on the Disability Access Section may be accessed from the home page under “Disability Access and Rights in California.”
- **California Disability Access Information**
www.disabilityaccessinfo.ca.gov
Information and links on the major laws, regulations, and areas of interest regarding disability rights and access for persons with disabilities.
- **California State Personnel Board (SPB)**
www.spb.ca.gov
 - 1) The Limited Examination and Appointment Program (LEAP) may be accessed from the home page under “Special Programs.”
 - 2) SPB Policy Memo (Pinkie) “Pre-Employment Medical Evaluation Subject to Proper Placement” dated July 9, 1993, may be accessed from: www.spb.ca.gov/docs/pinkies.htm
- **California Fair Employment and Housing Agency** 
www.dfeh.ca.gov
DFEH publications may be accessed from the homepage by clicking on “Publications” on the left, then “Employment Discrimination.”
- **Department of Personnel Administration** www.dpa.ca.gov
Personnel Management Liaison Memo 2001-031 “Revised Requirements under the California Fair Employment and Housing Act (FEHA)” dated August 15, 2001, may be accessed from:
www.dpa.ca.gov/textdocs/fpmlist.htm
- **Job Accommodation Network** www.jan.wvu.edu 
- **AT (Assistive Technology) Network** www.atnet.org
- **Department of Justice** www.usdoj.ca.gov
ADA Home Page may be accessed from:
www.usdoj.gov/crt/ada/adahom1.htm

FACT SHEET

Disability Access Section

The California Department of Rehabilitation (DOR) was designated by the Office of the Governor to serve as the lead state agency in California's efforts to implement the Americans with Disabilities Act (ADA) in state government. The Disability Access Section (DAS) was established in 1992 to promote disability rights in state government and DOR partnerships in the community.

The Section serves as a centralized resource for providing public information, training, and technical assistance on the Fair Employment Housing Act (FEHA), ADA, and other related disability laws to state entities, agencies, and One-Stop service delivery systems serving persons with disabilities and employers. Our dedicated staff has 150+ collective years of professional experience in training, employment service, vocational rehabilitation, physical access, and program assessment.

We provide comprehensive consulting services and technical assistance in the following areas:

- Disability Awareness
- Employment Issues
- Accessibility to Programs and Services
- Physical Access Surveys
- Publications
- Referrals and Resources

For additional information on services our Section provides, or to order publications, please contact:

Phone: (916) 263-8674

TTY: (916) 263-8672

FAX: (916) 263-8671

For additional information on interagency agreements with State government entities and our training services, please contact:

DAS Training Coordinator

Phone: (916) 263-8695 or

E-mail: dastraining@dor.ca.gov

February 2007

Glossary: Workers' Compensation

Advisory Rating (Informal) – Is issued by the Office of Benefit Determination (Disability Evaluation Bureau) on non-litigated cases when requested by the employer (or SCIF) and the injured worker. This type of rating is not binding on either party. If either is dissatisfied, a formal hearing before the WCAB may be requested.

Affirmative defense – Defenses in which the burden of proof is on the defendant, e.g. , intoxication, and initial aggressor.

Agreed Medical Examiner (AME) - The agreed upon doctor by all parties to perform the medical evaluation to resolve issues of Permanent Disability (PD), future medical, Vocational Rehabilitation (VR), Permanent & Stationary status (P&S), New & Further disability and questions concerning appropriateness of medical treatment. (How an AME can be used differs slightly for pre and post '91 cases.)

Alternate Work - A different job with your employer when you are found to have work restrictions which prevent you from permanently returning to your usual and customary job.

Application for Adjudication of Claim – A request for the Workers' Compensation Appeals Board (WCAB) to hear both sides of a bona fide dispute and render a decision.

Apportionment – In cases involving pre-existing disease or prior disability the employer shall be held liable only for that portion of permanent disability caused by industrial injury. If the effect of a previous injury or disease can be rated on objective factors and existed at the time of the new injury, apportionment may be indicated. However, there must be irrefutable evidence to support a finding of pre-existing disability.

Apportionment (medical) - A medical opinion attributing a clearly defined portion of an injured's present disability to a pre-existing (or subsequent) non-industrial level of disability. This limits our liability for PD to those related to industrial injuries resulting from employment with our insured.

Arbitration - A method whereby the parties may resolve disputes on those cases in which the date of injury is on or after 1/1/90 and the injured is represented without having to go before a WCAB judge.

Arising Out of Employment and in the Course of Employment (AOE/COE) – Refer to Labor Code requirement that to be compensable, and injury must exist which occurs during the course of an employee performing his/her duties and is a result of the employment.

Attorney Disclosure Statement – A form provided by the applicant's attorney to all clients who engage services for representation before the WCAB or Administrative Director. A copy of this form is provided to the employer or carrier.

Audit Unit - A unit within DWC that receives complaints against claims administrators. These complaints may lead to an investigation or audit of the company's claims handling practices.

Automatic Penalties - Penalties added to a benefit, without an order by the WCAB or any other tribunal or agency.

Binding Arbitration - A dispute is submitted to an arbitrator and the parties agree in advance to abide by whatever the arbitrator decides. This is the method that will be used to resolve items such as lien disputes.

Bona Fide – Authentic, genuine, made in good faith.

Bureau of Fraudulent Claims - The state agency to which fraudulent claims must be reported for insured employers.

Case Law – Law deriving from a particular set of circumstances which thenceforth governs all such instances where similar reasons exist for the support of arguments. Examples are Elizando, Carter, Thomas and Rogers.

Civil Penalties - Penalties that the Administrative Director may assess against insurers for failure to properly handle workers' compensation claims.

Claim Form - A form employer must provide the injured worker within one day of the injury. The completed form must be forwarded to the insurer.

Claims Administrator - This is the term for insurance companies and others who handle your workers' compensation claim.

Commutation – Is a conversion from installment payments of future compensation (PD or Death) to a lump sum payment. The employer receives credit for interest at a rate of 3% per year.

Compromise and Release (C&R) – A voluntary agreement subject to approval by the WCAB, which for a specified amount, releases liability the employer of further liability for the injury(s) specified in the agreement, except Vocational Rehabilitation.

Consultative Rating – May be obtained in litigated cases. It is not an official rating, but is merely advisory and is usually obtained by the parties to assist them in settling a case. A request for a consultative rating may be submitted to the Office of Benefit Determination by either party or jointly by both parties.

Continuance – A referral made at a pre-trial conference for a future date if the case is not ready for trial AND the judge agrees.

Contribution – Right to reimbursement of benefits paid from others where liability is shared; liability is apportioned according to the extent of exposure.

Credit – An account entry that can be asserted for payment of past benefits or against any future benefits that may be due.

Cumulative Trauma (CT) – An injury which occurs as a result of repetitive trauma. None of the individual repeated traumas is generally severe enough to cause injury, but their total effect over a period of time causes the need for medical treatment and/or disability

Date of First Lost Time - The first day for which the injured worker does not receive his full pay. This means that the date of injury can now also be the date of first lost time.

Date of Knowledge (DOK) - The date that the employer learned of an industrial injury. First payments must be made within 14 days of this date and first day of lost time.

Death Benefits - Benefits paid to surviving dependents if a work related injury or illness results in death within five years.

Declaration of Readiness to Proceed (DOR) – Filed with the WCAB when a party is ready to proceed with a hearing.

Defendant - The employer or his/her representative, usually the insurance company.

Deposition – Testimony given under oath, especially in writing.

Determination and Order (D&O) - A decision by the Rehabilitation Unit on a vocational rehabilitation dispute.

Disability Evaluation Unit (DEU) - A unit within DWC that calculates the percent of permanent disability based upon the medical reports.

Discrimination Claims (Labor Code 132a) - A petition filed because your employer has discharged you or otherwise discriminated against you because of your industrial injury.

District Attorney - Self-insured fraudulent cases must be reported to the district attorney in the county where the fraud allegedly took place.

Division of Workers' Compensation - The new name for the Division of Industrial Accidents.

Employee – Any person who performs a service for another under any appointment, contract, or apprenticeship program. Unless excluded, a person will be considered an employee whether the agreement was written, oral, or implied.

Employer – Any person or entity engages in services of another person. Unless excluded, it includes individuals, corporations, partnerships, state, city and county entities, etc.

Finalization – Refers to the conclusion of a case where there is permanent disability and/or future medical care and/or dispute over some issue. The method selected (a formal award, an advisory rating, or a compromise and release) will be the one that best protects the interests of the injured worker and the employer.

Findings & Award (F&A) - A Workers' Compensation Administrative Law Judge's decision finding that an applicant is entitled to disability benefit payments, future medical treatment, or both.

Findings & Order (F&O) - A Workers' Compensation Administrative Law Judge's decision in which no disability payments or future medical treatment is awarded.

First Aid - Any one-time treatment, and any follow-up visit for the purpose of observation, of minor scratches, cuts, burns, splinters, etc. which do not ordinarily require medical care. The one-time treatment and follow-up visit for observation may be provided by a physician or registered professional personnel.

Formal Rating – Is issued on litigated cases at the request of a judge of the WCAB.

Fraud - Any knowingly false or fraudulent material statement for the purpose of obtaining or denying workers' compensation benefits.

Future Medical - On-going entitlement to medical treatment for a work related injury.

Health and Safety Committee - The committee established to help employers establish effective occupational injury and illness prevention programs.

Hearings - Formal proceedings held at the Workers' Compensation Appeals Board (WCAB) before a Workers' Compensation Administrative Law Judge.

In Pro Per - An injured worker or other party who is not represented by an attorney.

Independent Medical Examiner (IME) – A physician or physicians appointed by the Appeals Board and/or compensation judges to examine an applicant and report their findings. Generally used when there is substantial disagreement between the applicant and defense doctors and the parties cannot agree to an AME.

Independent Rehabilitation Representative (IRR) - A fully qualified Vocational Rehab counselor. The requirements are found in L.C. 4635 (c).

Industrial Medical Counsel (IMC) - A group of various types of doctors appointed by different politicians who will regulate the medical aspects of workers' compensation. One of the main goals is to select the Qualified Medical Examiners and to maintain that panel.

Information & Assistance Unit (I&A) – A unit within DWC that provides information to all parties and informally resolves disputes.

Injury – Any disability, irrespective of fault, which is work related. The limitations of the employee injury are as follows: (1) intoxication, (2) self inflicted, (3) suicide, (4) employee is initial aggressor in a fight, (5) felony, or (6) injury caused by recreational activity outside the scope of employment.

Lien - A right or claim for payment against a workers' compensation case.

Light Duty - Temporary change in job assignment to accommodate work restrictions while you are healing. May or may not pay at the same rate as your normal work assignment. Lost wages may be partially made up by Temporary Partial Disability (TPD) payments.

Limited/Modified Duty – A temporary change in the job requirements to allow an employee to return to work during the recovery process.

Litigated Claim - A workers' compensation claim where an Application for Adjudication has been filed.

Mandatory Arbitration - There are several types of cases where arbitration will be mandated based on the amount of permanent disability and the length of time before a case can be tried.

Mandatory Settlement Conference (MSC) - A conference at the WCAB required before a case can be tried.

Mediation Conferences - A voluntary conference held before an I & A Officer to resolve disputes for injured workers who are not represented by an attorney.

Medical Treatment – Treatment necessary to cure or relieve the effects of an injury. This includes medical, hospital, surgical and nursing care as well as any necessary medications, supplies, or appliances. The provider of the treatment may be a medical doctor, chiropractor, osteopath, psychologist, podiatrist, physical therapist, dentist, optometrist, or acupuncturist.

Modified Work - A change in your working conditions in order to accommodate permanent work restrictions determined by your Primary Treating Physician when you have become Permanent and Stationary.

New & Further Disability - Injured may file a 'petition to reopen' a prior Findings & Award within 5 years of the original date of injury. This is most often done if injured suffers an increase in disability stemming from the original injury during this time period. As a result, the award can be increased to compensate injured for the addition permanent disability. (This may also apply to need for medical treatment and VR eligibility/services).

Objectives - Consideration of certain measurable findings such as range of motion in a joint, level of amputation, hearing or visual acuity etc.

Office of Benefit Assistance and Enforcement - This office replaces the Information and Assistance program, and will also conduct the audits of insurers, self insureds, and third party administrators (TPA's). This office will also enforce the new civil penalties.

Office of Benefit Determination - This office will review and approve all vocational rehabilitation plans and will conduct the evaluation of permanent disability.

Order Taking Off Calendar (OTOC) - An order that places a WCAB case in an inactive status.

Panel Qualified Medical Evaluator - A list of three independent qualified medical evaluators issued by the state Industrial Medical Council. You select any one of the three doctors for your evaluation. This is for workers not represented by an attorney.

Party - Normally this includes you, the claims administrator, your employer, attorneys, and any other person who has an interest in your claim (for example, doctors or hospitals that have not been paid).

Permanent and Stationary (P&S) - Maximum recovery. A plateau where no further change in the condition are anticipated. (Does not mean injured recovers to pre-injury status.)

Permanent Disability (PD) - Indemnity is intended to compensate an injured worker for physical or mental impairment resulting from an industrial injury, which diminishes future earning ability. It is not intended as a wage replacement or to compensate the worker for pain and suffering during the recovery period.

Permanent Disability Advance (PDA) - A voluntary lump sum payment on permanent disability due in the future.

Permanent Disability Payments - Mandatory bi-weekly payments on the undisputed portion of permanent disability, prior to or subsequent to an award.

Permanent Disability Rate - The weekly monetary amount at which the benefit will be paid within the statutory minimums and maximums.

Permanent Disability Rating - A formula that takes into consideration amount of disability (as determined by a doctor), part(s) of body injured, age expressed as a "percentage".

Petition for Reconsideration (Recon) - An appeal of a decision issued by a Workers' Compensation Administrative Law Judge. It must be filed within 20 days of the judge's final decision.

Predesignated Physician - A Primary Treating Physician that can initially treat you if you have advised your employer in writing prior to the industrial injury or illness. You must have seen the predesignated physician prior to selection.

Primary Treating Physician (PTP) - The doctor who has overall responsibility for treatment of your industrial injury or illness. There can only be one PTP at a time.

Proof of Service - A form used to show that documents have been sent to specific parties.

Qualified Injured Worker (QIW) - An injured worker who is entitled to vocational rehabilitation benefits.

Qualified Medical Examiner (QME) - A doctor authorized by the IMC to conduct evaluations in workers' compensations cases.

Qualified Rehabilitation Representative (QRR) - A rehabilitation consultant who meets the requirements specified in L.C. 4635 (b)

Referee – A person who has authority to resolve disputes, approve C&R's , issue stipulated F&A's or frame still disputed issues for trial. WCAB judges oversee referee decisions.

Rehabilitation Unit - A unit within DWC that administratively resolves vocational rehabilitation disputes.

Return-To-Work (RTW) – When an employee returns to his/her normal occupation.

Rules of Evidence – The rules of evidence at the WCAB are more relaxed; the regular rules used in Superior or Municipal Court do not apply at the WCAB.

Rules of Practice and Procedure of the WCAB (WCAB Rules) – Rules and regulations ratified and adopted by the WCAB in accordance with the provisions of the Labor Code.

Serious and Willful Misconduct (S&W) - A petition filed if the injury is caused by the serious and willful misconduct of the employer or the injured worker.

Settlement - A workers' compensation cases may be settled in one of two ways, by a Compromise and Release (C&R) or by a Stipulation with Request for Award (Stip). A C&R usually settles all outstanding issues in a claim for a single lump sum payment. A Stipulation may leave certain issues open, such as future medical treatment and/or vocational rehabilitation.

Specific – An injury that occurs as the result of one incident or exposure that causes disability or need for medical treatment.

State Disability Insurance (SDI) - A branch of the Employment Development Department that pays temporary disability benefits for non-industrial injuries or illnesses.

Stipulation with Request for Award (Stip) - A settlement where the parties agree on the terms of an award. It may include any future medical treatment. Payment takes place over time.

Standard Rating - The amount of permanent disability as determined by the doctor before it is adjusted for age and occupation. Will be expressed as work restrictions, subjective or objective factors.

Statute of Limitations – Setting a time limit on legal actions.

Stipulation – Where there is no dispute in the facts in case or where the facts have been agreed upon or compromised, a written stipulation signed by both parties is submitted to the WCAB for approval with a request for an Order or Award issued pursuant to the stipulation without the necessity of a hearing. Attorney fees should be stipulated or a request made to the WCAB for a fee.

Structured Settlement – Is an alternate form of Compromise and Release which is used when a single lump-sum payment is not in the best interest of all parties, or as an alternative to a lump-sum settlement.

Subjective - Consideration of complaints of pain based on frequency & intensity, which results in a percentage of permanent disability.

Supplemental Litigation Worksheet (SCIF Form 229a) – Used to provide SCIF Legal with additional information after a DOR has been filed.

Subpoena Duces Tecum (SDT) - Issued by the WCAB to command the production of papers, records, documents, upon a showing of possession or control of person named in the subpoena.

Summary Rating - The percentage of permanent disability calculated by the DWC Disability Evaluation Unit based on either the Primary Treating Physician or a Panel QME. This type of rating is only available for workers not represented by an attorney.

Summary Rating Reconsideration - An administrative procedure to object to the Summary Permanent Disability Rating issued by the DWC Disability Evaluation Unit. The request must be made within 30 days of receipt of the summary rating.

Temporary Disability (TD) or Temporary Total Disability (TTD) - A wage replacement benefit paid when your physician reports you cannot work because of an industrial injury or illness.

Toll – Starting the Statute running. “Tolling the statute.”

Transportation Expenses - A benefit to cover your out-of-pocket expenses for mileage, parking, and toll fees related to a claim, usually a reimbursement.

Uninsured Employers Fund (UEF) - If your employer is illegally uninsured, this fund may provide benefits to you.

Venue – The location of filing of a claim. Venue rules intend to establish a rational relationship between the place for filing a claim and either the injured's residence or place of injury. Not subject to stipulation by parties, but can be petitioned for change of venue.

Vocational Rehabilitation (VR) – The benefit that provides an employee who has been determined to be QIW. When an employee participates in VR, he/she continues to receive a maintenance allowance (TD, VRMA, or VRIDL). Applies to dates of injury on or before December 31, 2003.

Vocational Rehabilitation Maintenance Allowance (VRMA) - Formerly known as vocational rehabilitation temporary disability (VRTD).

Wage Loss - Temporary disability benefits that may be paid when an employee returns to work at less than full earnings. Also known as Temporary Partial Disability (TPD).

Work Restriction - "Guidelines for Work Capacity". Each category A through H is based on the injured's loss of capacity for example (A) – precludes very heavy lifting (loss of $\frac{1}{4}$ of pre-injury lifting capacity) which corresponds to a 10% "standard rating."

Workers' Compensation Administrative Law Judge - Judges at DWC district offices that conduct hearings, take evidence, issue decisions, and approve settlements.

Workers' Compensation Administration Revolving Fund - The fund to pay for the administration of workers' compensation in California. It is funded by insureds, self insureds and the General Fund (from the state).

Workers' Compensation Appeals Board (WCAB) – The administrative body which administers the workers' compensation law and oversees the decisions of workers' compensation judges and panels.

Workers' Compensation Rate Study Commission - Established for reviewing and recommending how rates will be established in the future.

Work Place Health and Safety Revolving Fund - Established to fund the administration of items mandated in Division 4 of the Labor Code.

Worker's Compensation Insurance Rating Bureau (WCIRB) – Provides information regarding coverage, carriers and employers.

Qualified Injured Worker (QIW) – The designation given when it is medically determined that, due to the industrial injury, an employee will not be able to return to his/her usual and customary job and will need rehabilitation services.

Qualified Medical Examiner (QME) - Physician in post '91 cases whom is used to address disputed issues such as the extent of permanent disability. Must be on a list published by the Industrial Medical Council. Injured is issued a panel of 3 names in each specialty from which one name is chosen.

Reinstatement Waiver or Resignation from Employment

The State Compensation Insurance Fund (SCIF) has had an internal policy that its employees will not execute or provide waivers of reinstatement or resignations as part of a compromise and release (C&R) document. There has been some inconsistency on the part of the SCIF attorneys with regard to this issue which periodically makes providing the information below necessary.

The Master Agreement does not provide that the SCIF representatives represent the employer for the purpose of personnel issues. The following is information that has been distributed several times over the past few years and represents the status of this issue.

A waiver of reinstatement, or resignation from employment, is a personnel issue which must be executed by the employer. The separate reinstatement waiver or resignation language agreement is the responsibility of the employer, and is not the responsibility of the SCIF representative(s).

Question: Is it appropriate to include a reinstatement waiver or resignation language in the compromise and release papers of a workers' compensation claim?

Answer: No.

Question: Is it appropriate to resolve employment status prior to or at the time a workers' compensation claim is being settled?

Answer: Yes.

Question: How is employment status resolved amidst settlement of the workers' compensation claim?

Answer: The SCIF attorney will put the employer's legal department or other designated departmental representative in contact with the employee's attorney (applicant's attorney) to discuss resolution of employment status. The separate reinstatement waiver or resignation language agreement is the responsibility of the employer, and is not the responsibility of the SCIF representative(s).

Question: Can the employer be held in violation of LC 132a if reinstatement waivers or a resignation is drafted at the time a compromise and release (C&R) agreement is reached?

Answer: Courts have found that negotiating and agreeing to a reinstatement waiver or resignation is not in violation of LC 132a and such language has been

upheld by the State Personnel Board as enforceable. Whether the waiver or resignation is enforceable is largely depended on the employee having competent counsel and whether his/her rights being waived were adequately covered prior to signature.

Analysis:

Although it is appropriate to discuss resolution of an employee's employment status with his/her employer at the time of resolving his/her workers' compensation claim(s), any type of resignation or reinstatement waiver language must be a separate agreement from the C&R settlement of a workers' compensation claim.

In a situation where the applicant (injured employee) has been approved for disability retirement, the applicant has "mandatory reinstatement" rights to his/her prior civil service position. The right to return is contingent upon medical that supports that his/her medical condition has improved to the point where he/she can perform the substantial (essential) portions of his/her duties. The employer (department) cannot rely upon the settlement of the workers' compensation claims via C&R to cover this situation, or the situation where a disability retirement is pending and later denied by CalPERS.

These situations can and have been resolved by including settlement of the applicant's employment status via a waiver of reinstatement which specifies that the applicant is voluntarily waiving his/her rights to reinstatement if either his/her application for disability retirement is rejected, or later rescinded. The SPB in the Johnson mater, (1996) SPB Precedential Decision No. 96-03 and in the recent case of Carolyn Ortega, Case No. 02-4039 has upheld that an employee can in fact enter into a settlement of his/her reinstatement rights and in fact waive such rights. In the Ortega case, the applicant chose to tender a resignation in order to obtain a C&R settlement of her workers' compensation claim(s), and the language was upheld at the SPB.

The waiver or resignation language have led to legal challenges on the basis that the language is in violation of LC 132a which disallows discrimination against workers who are injured in the course and scope of their employment. Any employer who violates LC 132a is guilty of a misdemeanor and the applicant's compensation is increased by ½, not to exceed \$10,000 together with costs, expenses and entitlement to reinstatement and reimbursement for lost wages and work benefits caused by the act of the employer.

In the case of Parker V. WCAB, CSUS, 5 WCAB Rptr. 10,059 (02/05/03) it was found that the WCAB does have the discretion to order reinstatement per a LC 132a violation despite concurrent proceedings at the SPB. There is no "exhaustion of administrative remedies" defense under LC 132a for State employees.

TO: Injured Worker

FROM: Employer / Department

DATE:

RE: Reinstatement Waiver

I understand that it is disadvantageous for the Department of _____ to settle my workers' compensation case by way of compromise and release if the possibility remains that I might again become employed by this Department. I understand that I have alternatives to a compromise and release settlement, but I prefer this type of settlement. Upon my own initiative to induce the Department to make this lump sum settlement, and after consultation with my attorney(s), I voluntarily waive any rights to reinstatement or rehire, agree not to seek reinstatement with this employer, and agree not to reapply for employment within the Department of _____.

See *Dewayne Johnson v. Department of Corrections*, case no 33955 (CEB 5/96) and *Brown v. WCAB* (1988) 54 C.C.C. 3.

Applicant

Dated

Applicant's Attorney

Dated